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The NORTH CAROLINA REGISTER

IN THIS ISSUE

EXECUTIVE ORDER

IN ADDITION
Final Decision Letter

PROPOSED RULES

Administrative Hearings, Office of
Certified Public Accountant Examiners
Electrolysis Examiners
Environment, Health, and Natural Resources
Human Resources
Insurance
Medical Examiners
Mortuary Science
Nursing, Board of
Occupational Therapy
State Personnel

RRC OBJECTIONS

RULES INVALIDATED BY JUDICIAL DECISION

CONTESTED CASE DECISIONS

ISSUE DATE: November 1, 1993

Volume 8 • Issue 15 • Pages 1368 - 1512



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of
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Drawer 27447, Raleigh, North Carolina 27611-7447, (919)
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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
Publication Schedule
(July 1993 - May 1994)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Elec- tronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
8:7	07/01/93	06/10/93	06/17/93	07/16/93	08/02/93	08/20/93	10/01/93
8:8	07/15/93	06/23/93	06/30/93	07/30/93	08/16/93	08/20/93	10/01/93
8:9	08/02/93	07/12/93	07/19/93	08/17/93	09/01/93	09/20/93	11/01/93
8:10	08/16/93	07/26/93	08/02/93	08/31/93	09/15/93	09/20/93	11/01/93
8:11	09/01/93	08/11/93	08/18/93	09/16/93	10/01/93	10/20/93	12/01/93
8:12	09/15/93	08/24/93	08/31/93	09/30/93	10/15/93	10/20/93	12/01/93
8:13	10/01/93	09/10/93	09/17/93	10/18/93	11/01/93	11/22/93	01/01/94
8:14	10/15/93	09/24/93	10/01/93	11/01/93	11/15/93	11/22/93	01/01/94
8:15	11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
8:16	11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
8:17	12/01/93	11/05/93	11/15/93	12/16/93	01/03/94	01/20/94	03/01/94
8:18	12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94
8:19	01/03/94	12/08/93	12/15/93	01/18/94	02/02/94	02/21/94	04/01/94
8:20	01/14/94	12/21/93	12/30/93	01/31/94	02/14/94	02/21/94	04/01/94
8:21	02/01/94	01/10/94	01/18/94	02/16/94	03/03/94	03/21/94	05/01/94
8:22	02/15/94	01/25/94	02/10/94	03/02/94	03/17/94	03/21/94	05/01/94
8:23	03/01/94	02/08/94	02/15/94	03/16/94	03/31/94	04/20/94	06/01/94
8:24	03/15/94	02/22/94	03/10/94	03/30/94	04/14/94	04/20/94	06/01/94
9:1	04/04/94	03/11/94	03/18/94	04/19/94	05/04/94	05/20/94	07/01/94
9:2	04/15/94	03/24/94	03/31/94	05/02/94	05/16/94	05/20/94	07/01/94
9:3	05/02/94	04/11/94	04/18/94	05/17/94	06/01/94	06/20/94	08/01/94
9:4	05/16/94	04/25/94	05/02/94	05/31/94	06/15/94	06/20/94	08/01/94

Note: Time is computed according to the Rules of Civil Procedure, Rule 6.

* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.

** The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

**EXECUTIVE ORDER NUMBER 31
STATE COMMISSION ON NATIONAL
AND COMMUNITY SERVICE**

WHEREAS, the increasing realization of the importance of volunteerism and civic participation, the growing recognition of community service as a means of community and state problem-solving, and the revival of national service as an avenue for addressing many of the country's unmet social, environmental, educational, and public safety needs have revealed new options for enhancing the quality of life for North Carolinians; and

WHEREAS, promoting the capability of North Carolina's people, communities, and enterprises to work collaboratively is vital to the long-term prosperity of this state; and

WHEREAS, building and encouraging community service as an integral part of the formula to our growth as a state and as a nation requires cooperative efforts by the public sector, the private sector, the nonprofit sector, and partnerships among these sectors; and

WHEREAS, a State commission is necessary to advise and assist in the development of a comprehensive, statewide service plan for promoting volunteer involvement and citizen participation in North Carolina;

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Establishment.

The State Commission on National and Community Service ("Commission") is hereby established to encourage community service and volunteer participation as a means of community and state problem-solving; to promote and support voluntary citizen involvement in government and private programs throughout the state; to develop a long-term, comprehensive vision and plan for action for community service initiatives in North Carolina; and to serve as the state's liaison to national and state organizations which support its mission.

Section 2. Membership.

A. Members of the Commission shall be appointed by the Governor on a bipartisan basis. It shall consist of no fewer than 15 and no more than 25 members. Not more than 50 percent of the Commission plus one member may be from the

same political party. To the extent possible, it shall be balanced according to race, ethnicity, age, disability, and gender. In establishing the Commission, the Governor shall appoint one-third of the initial members for a term of one year; one-third for a term of two years; and one-third for a term of three years. Following expiration of these initial terms, all appointments shall be for three-year terms. Members may not serve two consecutive terms.

B. The Commission shall include:

- (1) An individual with expertise in the educational, training, and developmental needs of youth, particularly disadvantaged youth.
- (2) An individual with experience in promoting the involvement of older adults in service and volunteerism.
- (3) A representative of community-based agencies or community-based organizations within the State.
- (4) The Superintendent of the Department of Public Instruction, or his designee.
- (5) A representative of local governments in the State.
- (6) A representative of local labor organizations in the State.
- (7) A representative of business.
- (8) An individual between the ages of 16 and 25 who is a participant or supervisor in a volunteer or service program.
- (9) A representative of the Corporation for National and Community Service described in Section 122(a) of the United States Public Law 103-82 ("P.L."), as a non-voting, ex officio member.

C. The Commission may include:

- (1) Members selected from among local educators.
- (2) Members selected from among experts in the delivery of human, educational, environmental, or public safety services to communities and persons.
- (3) Representatives of Native American tribes.
- (4) Members selected from among out-of-school youth or other at-risk youth.
- (5) Representatives of entities that receive assistance under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.)

D. Not more than 25 percent of the Commission members may be employees of state government, though additional state agency representatives may sit on the Commission as non-voting, ex officio

members.

E. Vacancies among the members shall be filled by the Governor to serve for the remainder of the term.

Section 3. Officers.

The Officers of the Commission shall be Chair, Vice-Chair, Secretary, and Treasurer. All officers shall be elected by the voting Commission members from among their ranks and shall serve for a term of one year. Vacancies in any offices shall be filled with an election by the Commission for the remainder of the unexpired term.

- a. Chair: It shall be the responsibility of the Chair to preside at all meetings of the Commission; to appoint all committee chairs; to assist all chairs in the planning of committee activities; to supervise all chairs as to the management of committee plans; to authorize and execute the wishes of the board; to call all special meetings with the approval of the Governor's Office of Citizen Affairs Director; and to be an ex officio member of all committees.
- b. Vice-Chair: The Vice-Chair shall assist the Chair, and, in the absence of the Chair, perform those duties. The Vice-Chair shall accept special assignments from the Chair and perform other duties as delegated by the Commission.
- c. Secretary: The Secretary shall be responsible for the minutes of the meetings of the Commission and the Executive Committee; shall keep an updated list of names, addresses, and telephone numbers of all Commission and Standing Committee members; and shall keep a record of attendance at meetings.
- d. Treasurer: The Treasurer shall oversee the preparation of all funding applications. The Treasurer shall also report on finances to the Commission at each meeting.

Section 4. Governor's Voluntary Advisory Council.

The Commission is the successor group to the Governor's Voluntary Advisory Council, formed by Martin Administration Executive Order 139. Therefore, all its functions and records shall be transferred to the Commission. That Council is hereby disbanded and the Executive Order, as amended by Order 185, is hereby rescinded.

Section 5. Standing Committees.

The standing Committees shall advise and assist the Commission in carrying out its duties and responsibilities. Committee chairs shall be appointed by the Commission Chair from among Commission members, but the committees' members need not be limited to Commission members. The Commission Chair, in consultation with the Committee Chairs, shall name the committees' members. Standing Committees of the Commission shall include:

- a. Youth Voice: The Standing Committee on Youth Voice shall have no more than fifteen members between the ages of 16 and 25. Its responsibilities shall include developing and recommending policies and programs to the Commission as well as bringing the perspective of young people to all Commission discussions and decisions.
- b. Volunteer Recognition: The Standing Committee on Volunteer Recognition shall assist with the implementation of Governor's awards relating to exemplary volunteer service in the State; work with individual communities to develop local recognition programs; and explore additional opportunities to recognize individuals and organizations addressing community needs through volunteer service.
- c. Evaluation: The Standing Committee on Evaluation shall evaluate each program funded by the Corporation for National and Community Service (described in the P.L. 103-82) and state organizations which support the purpose of the Commission to assure their on-going quality.
- d. Community Collaboration: The Standing Committee on Community Collaboration shall promote communication and information sharing between state and local private and public initiatives to meet community needs.
- e. Resource Development: The Standing Committee on Resource Development shall develop and implement strategies to secure local, state, and federal resources to reinforce, expand, and initiate quality community programs across the state.

Section 6. Meetings.

The Commission shall meet at least quarterly. Failure to attend at least 75 percent of called

meetings in any calendar year shall result in removal from the Commission. A quorum shall consist of a simple majority of voting members.

Section 7. Duties.

The Commission shall, in the performance of its tasks and functions:

- a. Ensure that its funding decisions meet all federal and state statutory requirements.
- b. Recommend innovative, creative, statewide service programs to increase volunteer participation in all age groups and community-based problem-solving among diverse participants.
- c. Develop and implement a centralized, organized system of obtaining information and technical support concerning volunteerism and community service recruitment, projects, training methods, materials, and activities throughout North Carolina. Share such information and support upon request.
- d. Promote strong interagency collaboration as an avenue for maximizing resources and provide that model on the State level.
- e. Provide public recognition and support of individual volunteer efforts and successful or promising private sector initiatives and public/private partnerships which address community needs.
- f. Stimulate increased community awareness of the impact of volunteer services in North Carolina.
- g. Utilize local, state, and federal resources to reinforce, expand, and initiate quality service programs.
- h. Assist the Governor's Office of Citizen Affairs in the planning and implementation of volunteer programs.
- i. Serve as the state's liaison and voice to appropriate national and state organizations which support its mission.
- j. Prepare a national three-year service plan for the State which follows state and federal guidelines.
- k. Prepare the financial assistance applications of the State under Sections 117B and 1301 of the P.L. 103-82.
- l. Assist in the preparation of the application of the North Carolina Department of Public Instruction for assistance under Section 113 of the P.L. 103-82.
- m. Prepare the State's application under Section 130 for the approval of service positions such as the national service educational award described in Subtitle D of the P.L. 103-82.
- n. Make technical assistance available to enable applicants for assistance under Section 121 to plan and implement service programs; and to apply for assistance under the federal service laws such as the P.L. 103-82.
- o. Assist in the provision of health care and child care benefits under Section 140 to participants in national service programs that receive assistance under Section 121 of the P.L. 103-82.
- p. Develop a state system for the recruitment and placement of participants in programs that receive assistance under the national service laws and disseminate information concerning national service programs that receive such assistance or approved national service positions.
- q. Administer the State's grant program in support of national service programs (using assistance provided to the State under Section 121 of the P.L. 103-82) including selection, oversight, and evaluation of grant recipients.
- r. Coordinate its functions (including recruitment, public awareness, and training activities) with any division of the federal ACTION program or the Corporation for National and Community Services outlined in the P.L. 103-82.

Section 8. Administration and Expenses.

The Governor's Office of Citizen Affairs shall provide necessary administrative and staff support services to the Commission. The Commission is authorized to accept funds and in-kind services from other state and federal entities, as authorized by the North Carolina Executive Budget Act. No per diem allowance shall be paid to members of the Commission. Members of the Commission and staff may receive necessary travel and subsistence expenses in accordance with state laws. These expenses shall be paid from federal funds where possible. If federal funds are not available, these expenses may be paid only if the Governor's Office has sufficient funds.

This Order is effective immediately.

Done in Raleigh, North Carolina, this the 1st day of October, 1993.

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

U.S. Department of Justice

Civil Rights Division

JPT:GS:CEI:tlb
DJ 166-012-3
93-2847

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

October 12, 1993

DeWitt F. McCarley, Esq.
City Attorney
P. O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. McCarley:

This refers to four annexations [Ordinance Nos. 2631, 2637-2639 (1993)] and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on August 12, 1993.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

**TITLE 10 - DEPARTMENT OF
HUMAN RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Aging intends to adopt rules cited as 10 NCAC 22T .0101, .0201 - .0205; 22U .0101 - .0102, .0201 - .0205; 22V .0101, .0201 - .0203; 22W .0101 - .0102, .0201 - .0205.

The proposed effective date of this action is February 1, 1994.

The public hearing will be conducted at 2:00 p.m. on November 16, 1993 at the Division of Aging, 693 Palmer Dr., Room 127, Raleigh, N.C. 27626-0531.

Reason for Proposed Action:

10 NCAC 22T .0101, .0201 - .0203 - Implementation of policy for providing health screening services for older persons.

10 NCAC 22U .0101 - .0102, .0201 - .0205 - Implementation of policy for providing senior companion services to older persons.

10 NCAC 22V .0101, .0201 - .0203 - Implementation of policy to provide a volunteer development program for older persons.

10 NCAC 22W .0101 - .0102, .0201 - .0205 - Implementation of policy to provide home health services to older persons.

Comment Procedures: Written comments may be received by the Director of the Division of Aging through December 1, 1993. Verbal comments will be heard at the public hearing.

CHAPTER 22 - OFFICE FOR AGING

SUBCHAPTER 22T - HEALTH SCREENING SERVICES

SECTION .0100 - SCOPE OF SERVICE

.0101 SCOPE OF HEALTH SCREENING SERVICES

As used in this Subchapter, the following definition of Health Screening Services shall apply. Health Screening Services consist of:

- (1) an evaluation of personal and family medical history information;

- (2) testing for diseases or health problems so as to detect problems or abnormalities or to identify factors that may make a person at risk for a health condition or problem; and
- (3) health counseling and referral for those individuals identified to be at risk of health problems or to have abnormalities.

Statutory Authority G.S. 143B-181.1(c).

SECTION .0200 - SERVICE PROVISION

.0201 PROVISION OF HEALTH SCREENING SERVICES

- (a) Health Screening Services shall:
- (1) be provided at facilities that are able to ensure individual privacy while conducting screening activities;
 - (2) include, at a minimum, basic screenings of height and weight, blood pressure, and visual acuity;
 - (3) include a medical history questionnaire for participants; and
 - (4) provide individualized counseling to participants.

(b) Medical treatment may not be provided as part of the health screening service.

Statutory Authority G.S. 143B-181.1(c).

.0202 ELIGIBILITY FOR HEALTH SCREENING SERVICES

Persons eligible for Health Screening Services shall include persons 60 years of age or older:

- (1) who are at the highest risk of having or developing health problems;
- (2) who have not sought primary medical care; and
- (3) who may be at risk of developing health problems.

Statutory Authority G.S. 143B-181.1(c).

.0203 PERSONNEL REQUIREMENTS

All personnel providing services shall meet relevant licensure and certification requirements established by North Carolina General Statutes.

Statutory Authority G.S. 143B-181.1(c).

SUBCHAPTER 22U - SENIOR COMPANION

SECTION .0100 - SCOPE OF SERVICE

.0101 SCOPE OF SENIOR COMPANION

Primary Service. Senior Companion programs serve a dual purpose:

- (1) the Senior Companion program provides part-time stipended volunteer community service opportunities for low-income persons aged 60 and over; and
- (2) the Senior Companion program provides one-on-one assistance to adults who have developmental disabilities or other medical or social problems or both who would benefit from companionship, therefore preventing isolation.

Statutory Authority G.S. 143B-181.1(c).

.0102 DEFINITION OF VOLUNTEER STATION

Volunteer Station is a public agency, private non-profit organization, or proprietary health care agency or organization that accepts responsibility for assignment and supervision of Senior Companions.

Statutory Authority G.S. 143B-181.1(c).

SECTION .0200 - SERVICE PROVISION

.0201 SENIOR COMPANION ELIGIBILITY

Older adults 60 years of age or older, whose income is below 125 percent of the federally established poverty level, may apply to become Senior Companions.

Statutory Authority G.S. 143B-181.1(c).

.0202 LETTER OF AGREEMENT

(a) Volunteer stations managing in-home placements shall develop a Letter of Agreement with the Senior Companion and the individual receiving Senior Companion services authorizing and describing the Senior Companion's activities in each home.

(b) The individual receiving Senior Companion services, or his or her legal representative(s), and the volunteer station staff must sign the Letter of Agreement.

Statutory Authority G.S. 143B-181.1(c).

.0203 HOURS

Senior Companions must serve 20 hours of volunteer service per week.

Statutory Authority G.S. 143B-181.1(c).

.0204 TRAINING AND COMPETENCY

Senior Companions must receive at least 40 hours of pre-service orientation and four hours of monthly in-service training from the volunteer station.

Statutory Authority G.S. 143B-181.1(c).

.0205 TERMINATION

Terminating individuals receiving Senior Companion services, for reasons such as increased medical needs, family or friends assuming the caregiving role, or the relationship between the Senior Companion and the individual receiving Senior Companion services is no longer benefiting either individual, must be made jointly by the project and the volunteer station staff.

Statutory Authority G.S. 143B-181.1(c).

SUBCHAPTER 22V - VOLUNTEER PROGRAM DEVELOPMENT

SECTION .0100 - SCOPE OF SERVICE

.0101 SCOPE OF VOLUNTEER PROGRAM DEVELOPMENT SERVICE

Volunteer Program Development is the development of a systematic process of utilizing volunteers of all ages to assist in providing services to older adults within the community.

Statutory Authority G.S. 143B-181.1(c).

SECTION .0200 - SERVICE PROVISION

.0201 NEEDS ASSESSMENT

(a) Each agency providing Volunteer Program Development must conduct or update, or both, an annual needs assessment to determine the need for volunteers to assist in providing services to older adults within the community.

(b) If the needs assessment indicates the need for volunteers, then the agency shall:

- (1) develop and maintain a file of potential volunteer opportunities;
- (2) design written job descriptions for each volunteer assignment which include job title, job responsibilities, required training or orientation, or both regarding the assignment, date and time of assignment, location of assignment, extent of commitment, level of on-the-job supervision needed, and name of supervisor;

- (3) promote volunteer involvement through use of the media and other public relations techniques;
- (4) interview volunteers for assessment of skills and assignments;
- (5) develop written procedures regarding acceptance, denial, or termination of volunteers;
- (6) negotiate time commitments from each volunteer for each assignment;
- (7) establish and maintain a system of recording volunteer hours;
- (8) provide orientation and training for volunteers prior to or at time of assignment;
- (9) provide for supervision of volunteers;
- (10) monitor and evaluate volunteer assignment and performance;
- (11) provide formal recognition of volunteers; and
- (12) develop and maintain personnel files on all volunteers.

Statutory Authority G.S. 143B-181.1(c).

.0202 ADEQUACY OF INSURANCE

Agency's providing Volunteer Program Development shall provide liability insurance coverage for volunteers providing volunteer duties.

Statutory Authority G.S. 143B-181.1(c).

.0203 DOCUMENTATION

(a) Each agency providing Volunteer Program Development must maintain a log of active volunteers and their assignments.

(b) The log must include the volunteer's name, date of enrollment, and volunteer assignment.

Statutory Authority G.S. 143B-181.1(c).

SUBCHAPTER 22W - HOME HEALTH SERVICES

SECTION .0100 - SCOPE OF SERVICES

.0101 SCOPE OF HOME HEALTH SERVICES

As used in this Subchapter, the following definition of Home Health Services shall apply:

- (1) Home Health Services provide skilled medical services to individuals in need of such services with the goal of maintaining or improving the individual's health status within the individual's

- (2) home.
Allowable Home Health Services include: skilled nursing, physical therapy, speech therapy, occupational therapy, medical social services, and nutrition care.
- (3) Home Health Services shall be prescribed by a physician.

Statutory Authority G.S. 131E-142; 143B-181.1(c).

.0102 DESCRIPTION OF HOME HEALTH SERVICES

As used in this Subchapter, the following descriptions of Home Health Services shall apply for older adults:

- (1) Nursing Services are offered by a licensed home care agency and are provided by a registered nurse or a licensed practical nurse under the supervision of a registered nurse, and in accordance with the North Carolina Nursing Practice Act, G.S. 90, Article 9A and the plan of care.
- (2) Physical Therapy is offered by a licensed home care agency and is performed by a licensed physical therapist or a licensed physical therapy assistant under the supervision of a licensed physical therapist and in accordance with G.S. 90, Article 18B, Physical Therapy, and the plan of care.
- (3) Occupational Therapy is offered by a licensed home care agency and provided by licensed occupational therapists or occupational therapy assistants as defined in G.S. 90, Article 18D, Occupational Therapy, and in accordance with the plan of care.
- (4) Speech Therapy is offered by a licensed home care agency and provided by a North Carolina licensed speech therapist as defined in G.S. 90, Article 22, North Carolina Licensure Act for Speech and Language Pathologists and in accordance with the plan of care.
- (5) Medical Social Services are offered by a licensed home care agency and is provided by a master's degree social worker or by a medical social worker assistant under the supervision of a master's degree social worker and in accordance with the plan of care.
- (6) Nutrition Care Services are offered by a licensed home care agency and provided by a licensed dietitian or nutritionist in

accordance with the Dietetics and Nutrition Practice Act as defined in G.S. 90, Article 25 and in accordance with physician's signed orders.

Statutory Authority G.S. 131E-142; 143B-181.1(c).

SECTION .0200 - SERVICE PROVISION

.0201 ELIGIBILITY FOR HOME HEALTH SERVICES

Individuals eligible for services must be 60 years of age or older and in need of physician prescribed medical care which they or their caregiver are unable to adequately provide and which can be provided safely in their own home.

Statutory Authority G.S. 131E-142; 143B-181.1(c).

.0202 SERVICE DELIVERY

(a) Home Health Services are skilled health services which shall be provided on an intermittent basis to clients in need of medical care which can be provided in their own home.

(b) All personnel providing services including nursing, physical therapy, speech therapy, occupational therapy, medical social services or nutrition care activities shall assure that all efforts complement one another and support the care plan.

(c) Service delivery requirements include:

- (1) Documenting each client contact in client record;
- (2) Making an assessment of each client upon referral;
- (3) Assisting with the development of a care plan which is authorized by the physician responsible for the client's medical care;
- (4) Reassessing clients and reviewing the plan of care according to policies and procedures of the home health agency;
- (5) Notifying the physician responsible for the client's medical care of any changes, such as the client's physical or environmental conditions, that suggest a need to alter the plan of care;
- (6) Administering drugs and treatments only as directed by the physician responsible for the client's medical care;
- (7) Signing of written or verbal orders or both by the physician responsible for the client's medical care within two weeks of issuing the order(s). The registered nurse shall record verbal

orders provided by the Physician responsible for the client's medical care involving drugs and nursing treatments; Verbal orders for allied health services other than nursing shall be given to either a licensed nurse or the appropriate health care professional as defined in 10 NCAC 3L .0901, recorded and signed by the person receiving the orders and countersigned by the physician responsible for the client's medical care within two weeks of issuing the order(s);

(8) Reviewing all medications a client may be taking to identify possible ineffective drug therapy or adverse reactions, significant side effects, drug allergies, contraindicated medication, and reporting any problems to the physician responsible for the client's medical care; and

(9) The availability of a qualified individual, such as a physician or public health nurse, at all times during operating hours.

Statutory Authority G.S. 131E-142; 143B-181.1(c).

.0203 STAFF QUALIFICATIONS

(a) Skilled nursing and other therapeutic services shall be provided under the supervision and direction of a physician or a registered nurse.

(b) Staff qualifications shall be documented in the personnel records and include:

- (1) documentation of a current North Carolina license to perform the home health service provided;
- (2) performance evaluations; and
- (3) required health examinations.

Statutory Authority G.S. 131E-142; 143B-181.1(c).

.0204 CLIENT RECORDS

(a) Records shall be kept for each Home Health Services client and shall include the following admission data:

- (1) identification data (name, telephone number, date of birth, sex, marital status, social security number);
- (2) source of referral;
- (3) name of physician(s) responsible for the client's care;
- (4) admission and discharge dates from hospital or other institutions when applicable;

- (5) assessment of home environment;
 - (6) names of family members, next of kin or legal guardian or both;
 - (7) a copy of the Client's Bill of Rights and documentation showing that each client has received a copy of his rights and responsibilities; and
 - (8) a signed Advanced Directive, if submitted by the client.
- (b) Records shall also include the following service data:
- (1) client's diagnosis;
 - (2) physician's orders for pharmaceuticals and medical treatments;
 - (3) initial assessment by appropriate professional;
 - (4) a record of all services provided with entries dated and signed by the individual providing the service;
 - (5) identification of problems, the establishment of goals and proposed interventions;
 - (6) discharge summary which includes an overall summary of the services provided by the agency and the date and reason for discharge. When a specific service to a client is terminated and other services continued, there shall be documentation of the date and reason for terminating the specific service; and evidence, as documented in the client records, of coordination of services when the client is receiving more than one home care service.
 - (7) Clients' records shall be retained for at least five years from the date of the most recent discharge of the client.

Statutory Authority G.S. 131E-142; 143B-181.1(c).

.0205 QUALITY ASSURANCE

Home Health Services shall be provided by an agency licensed as a home care agency in North Carolina in accordance with the North Carolina Home Care Licensure Act G.S 131E-142.

Statutory Authority G.S. 131E-142; 143B-181.1(c).

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to adopt rules cited as 10 NCAC 35E .0322, 35F .0201, .0301 - .0308, 42A .0601 -

.0608; amend 35D .0303, 35E .0104 - .0106, .0308; 41F .0704, 42J .0003, 42Q .0014, 42R .0204, 46G .0214, 46H .0104, 47B .0404 and repeal 35E .0306, 35F .0101 - .0103, .0106 - .0108 and 42A .0308 - .0309.

The proposed effective date of these actions are:

February 1, 1994
10 NCAC 41F .0704
10 NCAC 46G .0214
10 NCAC 46H .0104

March 1, 1994
10 NCAC 35F .0201, .0301 - .0308
10 NCAC 35D .0303
10 NCAC 42Q .0014
10 NCAC 42R .0204
10 NCAC 35F .0101 - .0103
10 NCAC 35F .0106 - .0108
10 NCAC 35E .0104 - .0106
10 NCAC 35E .0308
10 NCAC 42J .0003
10 NCAC 35E .0306
10 NCAC 42A .0308 - .0309
10 NCAC 35E .0322
10 NCAC 42A .0601 - .0608

July 1, 1994
10 NCAC 47B .0404

The public hearing will be conducted at 10:00 a.m. on December 1, 1993 at the Albemarle Building, 9th Floor Conference Room, 325 North Salisbury Street, Raleigh, NC 27603.

Reason for Proposed Action:

10 NCAC 35D .0303, 35F .0101 - .0103, .0106 - .0108, .0201, .0301 - .0308, 42Q .0014, 42R .0204 - To establish service cost-sharing requirements which will replace fee for services requirements.

10 NCAC 35E .0104 - To update the definition of State's Established Income.

10 NCAC 35E .0105 - To update rule language which references family income and family size; to remove child day care services, for which eligibility is now governed by 10 NCAC 46H .0200, and; to correct a typographical error.

10 NCAC 35E .0106, .0308, 42J .0003 - To reflect that Foster Care Services for Adults has a new title, Adult Placement Services; and to narrow

the scope of Health Support Services as placements of adults in residential health care facilities will be required in rules governing Adult Placement Services.

10 NCAC 35E .0306, 42A .0308 - .0309 - *To eliminate the current rules governing Foster Care Services to Adults since these requirements will be included in Adult Placement Services.*

10 NCAC 35E .0322, 42A .0601 - .0608 - *To establish rules governing Adult Placement Services administered by county departments of social services.*

10 NCAC 41F .0704 - *Effective July 1, 1993 the Health Services Commission repealed APA rules requiring inspections of family foster homes. Therefore, the Division of Social Services is requesting that county social workers monitor ten items on an Environmental Conditions Checklist which has been prepared by the Child Welfare Standards staff of the NC Division of Social Services.*

10 NCAC 46G .0214 - *To comply with new state legislation: G.S. 110-101.1.*

10 NCAC 46H .0104 - *To enable county departments of social services to determine the priority in which children eligible for day care subsidy will be served when funds are insufficient to serve all eligible children.*

10 NCAC 47B .0404 - *This rule is proposed at the request of the Department of Human Resources in order to better serve the rest home population.*

Comment Procedures: Comments may be presented in writing anytime before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these rules by calling or writing Mary Beach Shuping, Division of Social Services, 325 North Salisbury Street, Raleigh, NC 27603, (919) 733-3055.

CHAPTER 35 - FAMILY SERVICES

SUBCHAPTER 35D - CONDITIONS FOR PROVISION OF SERVICES

SECTION .0300 - ELIGIBILITY DETERMINATION

.0303 BASIS FOR DENIAL OR TERMINATION OF SERVICES

Reasons for denial of an application for services and reasons for the termination of services include

the following:

- (1) The individual has failed to cooperate with the agency in determining (or redetermining) eligibility;
- (2) The individual cannot be located to allow for determination (or redetermination) of eligibility;
- (3) The individual has been determined to be not eligible for the services requested on the basis that he does not meet (or because of changing circumstances, no longer meets) the conditions of eligibility for the program funding sources under which the service is provided or the definition of the target population for receipt of the service;
- (4) The service is not available in the county in which the individual lives;
- (5) There is reasonable certainty that the service will not be available in sufficient time to ensure its prompt provision, as set forth in Section .0500 of this Subchapter;
- (6) The agency has exhausted its funds for the provision of the service for that program year;
- (7) The individual has notified the agency that he no longer wants or needs the service;
- (8) The agency has determined that the individual is no longer able to avail himself of the service because he has moved to another county or has been admitted to an institution;
- (9) ~~The individual has refused to pay required fees;~~
- (10) ~~(+)The individual has failed to utilize the service or to cooperate in service delivery;~~
- (11) ~~(++)The individual fails to meet any other conditions set forth in policies governing delivery of the service.~~

Statutory Authority G.S. 143B-153.

SUBCHAPTER 35E - SOCIAL SERVICES BLOCK GRANT (TITLE XX)

SECTION .0100 - CONDITIONS OF ELIGIBILITY

.0104 DEFINITION OF ESTABLISHED INCOME

The established income is the median income 150% of the Federal Poverty Level of 1992 set by

the federal government and printed in Volume 44, 57, No. 27 31, page 5456 of the Federal Register of 1979, 1992 adopted by reference according to G.S. 150B-14(b). A copy of page 5456 of Volume 57, No. 31 of the Federal Register may be obtained from the Planning and Information Section, N.C. Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27603, (919) 733-4530, at a cost of ten cents (\$.10) at the time of adoption of this Rule.

Statutory Authority G.S. 143B-153.

.0105 MAXIMUM INCOME LEVELS FOR SERVICES

(a) Sixty Percent of Established Income. An individual whose income unit's gross monthly family income is less than 60 percent of the state's established income, adjusted according to family size of the income unit as defined in Rule .0103 of this Section, may be eligible for child day care services; transportation services; or federally funded abortion and sterilization resource items of health support services funded under the Social Services Block Grant (Title XX) and if available in the county in which he lives.

(b) Eighty Percent of Established Income. An individual whose income unit's gross monthly family income is as much as 60 percent but less than 80 percent of the state's established income, adjusted according to family size of the income unit as defined in Rule .0103 of this Section, may be eligible for federally funded abortion and sterilization resource items of health support services if available in the county in which he lives, the following service or resource items if available in the county in which he lives:

- (1) child day care services; and
- (2) federally funded abortion and sterilization resource items of health support services.

(c) One hundred Percent of Established Income. An individual whose gross monthly family income is as much as 80 percent but does not exceed 100 percent of the state's established income, adjusted according to family size, may be eligible for child day care services if it is available in the county in which he lives.

Statutory Authority G.S. 143B-153(2a)b..

.0106 WITHOUT REGARD TO INCOME STATUS

Individuals may be determined eligible for the following services on the basis of need for the

service and without regard to their income:

- (1) adoption services;
- (2) foster care services for adults; placement services;
- (3) foster care services for children;
- (4) protective services for adults;
- (5) protective services for children;
- (6) child day care services, transportation services, and federally funded abortion and sterilization resource items of health support services funded under the Social Services Block Grant (Title XX) that are needed in conjunction with protective services may be provided without regard to income during the first 12 months that protective services are provided if such service is available in the county in which the individual lives and the agency has received a report pursuant to G.S. 7A-543 or G.S. 108A-102, has initiated protective services in accordance with program policies, and has determined that such other services are needed to support the provision of protective services;
- (7) delinquency prevention (including residential care);
- (8) employment and training support services (including transportation and resource items);
- (9) health support services (including transportation and resources for the aging, disabled or handicapped but excluding sterilization and abortion resource items);
- (10) individual and family adjustment services (including camping component);
- (11) problem pregnancy (including residential care);
- (12) community living services;
- (13) day care services for adults;
- (14) housing and home improvement services (including resource items);
- (15) in-home aide services (levels I through IV) as described in Subchapter 10 NCAC 42H .0903 and .0904, which is incorporated by reference, including subsequent amendments and editions. Copies of these Rules may be obtained from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of the adoption of this Rule;
- (16) personal and family counseling;

- (17) preparation and delivery of meals; and
- (18) residential treatment for the emotionally disturbed.

Statutory Authority G.S. 143B-153(2a)b.

SECTION .0300 - SERVICE DEFINITIONS

.0306 FOSTER CARE SERVICES FOR ADULTS

(a) Primary Service. Foster care services for adults means assistance directly to, or on behalf of, aging, blind or disabled individuals and other adults in need of such service in finding licensed substitute homes suitable to the particular needs of such individuals when they are unable to remain in their own homes or when such service is needed to enable adults to move out of institutional care. Services include assessment with the individual, or his family, or both, considering the appropriateness of and need for initial or continued placement; determining the need and arranging for appropriate services to support the social, emotional, and physical well being of the individual during the placement including counseling to help the individual attain and maintain an adequate psychosocial adjustment; and counseling and casework services to support and strengthen the individual's relationship with his own family. Services also include recruitment, study and development of family care homes and group care facilities; evaluation and periodic re-evaluation to determine if the home or facility meets the needs of the individuals it serves; and consultation and technical assistance to help family care homes and group care facilities to expand and improve the quality of care provided.

(b) Components. None.

(c) Resource Items. None.

(d) Target Population. Aging, blind, or disabled individuals (18 years or older) or other adults needing to find licensed substitute homes when unable to stay in own home or moving out of institutional care.

Statutory Authority G.S. 143B-153.

.0308 HEALTH SUPPORT SERVICES

(a) Primary Service. Health support services means helping individuals and families to recognize health needs including those related to alcohol and drug abuse; to cope with incapacities and limited functioning resulting from aging, disability, or handicap and to choose, obtain and use resourc-

es and mechanisms of support under Medicaid (including the early and periodic screening, diagnosis and treatment program), medicare, maternal and child health programs and from other public or private agencies or providers of health services; counseling and planning, as appropriate, with individuals, families, and health providers to help assure continuity of treatment and the carrying out of health recommendations; and helping individuals to secure admission to medical institutions and children to secure admission to other health-related facilities as needed; and family planning services as described in (2) of this Rule. At county option, transportation, when not otherwise available, may be provided as necessary to access needed medical and health care resources.

(b) Components. Family planning services to enable individuals and families to voluntarily limit the family size or to space the children, and to prevent or reduce the incidence of births out of wedlock. Such services include educational activities, the provision of printed materials, counseling about family planning and genetics, and help in utilizing medical and educational services available in the community and state. Also included are educational services in human sexuality appropriate to an individual's emotional and social adjustment and physical development.

(c) Resource Items.

(1) Mandated Resources:

(A) For individuals who are recipients of AFDC, SSI, or protective services or whose family income is less than 80 percent of the state's established income maximum for social services eligibility, payment for medical services for nontherapeutic sterilization and payment for abortion in cases where the mother's life would be endangered if the fetus were carried to term.

(B) For women who are recipients of AFDC, SSI, or protective services or whose income does not exceed 50 percent of the state's established income maximum for social services eligibility, payment for abortion under the state abortion fund.

(2) Optional Resources. At county option any combination of the following resource items may be provided as needed and appropriate to enable aging, disabled or handicapped individuals to attain or maintain the highest level of functioning possible, to promote their

- well-being and to prevent or reduce inappropriate institutional care.
- (A) Assistance with communication to enable individuals to utilize needed health and medical resources and other community services and resources through the provision of interpreters for the deaf and the provision of telephones when not otherwise available for the aging, disabled, or handicapped who are alone and home-bound, or who have a health or medical condition which necessitates ready access to or frequent use of a telephone in their home.
- (B) Mobility assistance for aging, disabled and handicapped persons, through the installation of ramps, rails and other safety measures at the individual's home and the provision of escort service to health facilities and other needed resources for individuals unable to travel or wait alone.
- (C) Arranging for or providing friendly visitors or companions for part of a day to assist individuals who, because of frailty, physical or mental disability or social isolation, have limited contacts with other people. Such companionship service offers mental and physical stimulation and provides an opportunity for observation as to the need for professional help of any kind.
- (D) Provision of special health needs and supplies such as ostomy supplies, oxygen, bandages, orthopedic and other appliances needed by aging and disabled individuals in their own homes and not available through Medicaid, Medicare or resources without cost.
- (d) Target Population:
- (1) individuals or families experiencing health related problems;
 - (2) for the family planning component, individuals (male or female) who are of age to produce children.

Statutory Authority G.S. 143B-153.

.0322 ADULT PLACEMENT SERVICES

(a) Primary Service. Adult Placement Services are activities necessary to assist aging or disabled individuals and their families or representatives in

finding substitute homes or residential health care facilities suitable to their needs when they are unable to remain in their current living situations. Activities include completing an initial screening and assessment while providing counseling to help the individual and his family or representative to determine the need for initial or continued placement; assisting in the process for completing necessary financial applications and medical evaluations; helping to locate and secure placement in a suitable setting and level of care; supporting an individual and his family or representative in the individual's transition from one location to another; and providing counseling and other services to help the individual adjust to the new setting and maintain the placement. Adult Placement Services also include assisting individuals, when requested, to return to more independent settings in the community, or to relocate in more appropriate settings when new levels of care are needed.

Adult Placement Services must be provided by every county department of social services.

(b) Components. None.

(c) Resource Items. None.

(d) Target Population. An individual is considered to be in the target population if Adult Placement Services are appropriate and desired based on one of the following client needs:

(1) Adults who are unable to maintain themselves in their own homes independently or with available community or family supports.

(2) Adults who are living in substitute homes, residential health care facilities or institutions, and who need assistance in relocating due to changes in the level of care needed or other factors indicating that alternative settings may be more appropriate.

(3) Adults who are living in substitute homes, residential health care facilities or institutions, and who need assistance in returning to more independent living arrangements in the community.

(4) Adults who are living in substitute homes or residential health care facilities, and who need assistance in adjusting to or maintaining their placements due to individual or family problems or a lack of resources.

This target population includes wards for whom the director or assistant director of the county department of social services is the guardian.

(e) Once an individual is determined to be in the

target population, Adult Placement Services are provided in the following order of priority:

- (1) Adults receiving protective services for whom Adult Placement Services is in their protective services plans.
- (2) Adults who are at risk of abuse, neglect, or exploitation because:
 - (A) they need assistance with activities of daily living, instrumental activities of daily living, or health care and they have no caregiver, or the caregiver is not able, willing or responsible to provide the amount or type of assistance needed; or
 - (B) they were previously abused, neglected or exploited and the conditions leading to that situation continue to exist.
- (3) Adults who have problems which place them at risk of losing their current living situations.
- (4) Adults who do not meet any of the first three priority groups but whose quality of life would be improved with Adult Placement Services.

Statutory Authority G.S. 143B-153.

SUBCHAPTER 35F - SERVICE COST-SHARING

SECTION .0100 - FEES FOR SERVICES

.0101 GENERAL FEE POLICY

(a) No fees will be charged for any services provided to the following categories of individuals:

- (1) recipients of aid to families with dependent children payments;
- (2) recipients of supplemental security income benefits;
- (3) individuals whose family gross monthly income is less than 100 percent of the state's established income (median income designated in the Federal Register of 1979).

(b) No fees will be charged to any client for the following types of services:

- (1) protective services for adults;
- (2) protective services for children;
- (3) information and referral;
- (4) any service provided in conjunction with protective services, as described in 10 NCAC 41I and 10 NCAC 42V up to a maximum of 12 months from the time

protective services, as described in 10 NCAC 41I and 10 NCAC 42V up to a maximum of 12 months from the time protective services are initiated;
(5) child welfare services provided as part of permanency planning preventive or reunification services.

Statutory Authority G.S. 143B-153.

.0102 SERVICES FOR WHICH FEES ARE CHARGED

Fees must be charged for the following services or resource items when these services are provided to individuals whose gross monthly income is at or above 100 percent of the state's established income [median income printed in Volume 44, No. 27 of the Federal Register of 1979 adopted by reference according to G.S. 150B-14(b)] adjusted according to the number of persons contained in the income unit.

- (1) day care services for adults;
- (2) in home aide services;
- (3) preparation and delivery of meals;
- (4) housing and home improvement resource items only; and
- (5) personal and family counseling services.

Statutory Authority G.S. 143B-153.

.0103 AMOUNT OF FEES

(a) The amount of the fees charged for those services shall be in accordance with the fee schedule adopted by the Social Services Commission and published by the Division of Social Services. Copies of the fee schedule may be obtained from the Division of Social Services, 325 North Salisbury Street, Raleigh, North Carolina, 27611. In addition, the fee schedule is available for public inspection during normal business hours in the division offices and in each county department of social services.

(b) The fee schedule is as follows:

FEES SCHEDULE

Monthly Income	Family Size	Fee Amount (As a Percentage of Service Cost)
100% of *Estab. Income	1 \$ 704 844 2 \$ 921 1,104 3 \$ 1,138 1,365	50%
	4 \$ 845 985 5 \$ 1,105 1,288 6 \$ 1,366 1,592	60%
	7 \$ 986 1,125 8 \$ 1,289 1,473 9 \$ 1,593 1,820	70%
	10 \$ 1,126 1,266 11 \$ 1,474 1,657 12 \$ 1,821 2,047	80%
	13 \$ 1,267 1,407 14 \$ 1,658 1,841 15 \$ 2,048 2,275	90%
200% of Estab. Income and above	16 \$ 1,408 above 17 \$ 1,842 above	100%
100% of *Estab. Income	18 \$ 1,354 1,624 19 \$ 1,571 1,884 20 \$ 1,788 2,145	50%
	21 \$ 1,625 1,895 22 \$ 1,885 2,198 23 \$ 2,146 2,502	60%
	24 \$ 1,896 2,165 25 \$ 2,199 2,513 26 \$ 2,503 2,860	70%
	27 \$ 2,166 2,436 28 \$ 2,514 2,827 29 \$ 2,861 3,217	80%
	30 \$ 2,437 2,707 31 \$ 2,828 3,141 32 \$ 3,218 3,575	90%
200% of Estab. Income and above	33 \$ 2,708 above 34 \$ 3,142 above	100%
100% of *Estab. Income	35 \$ 1,828 2,193 36 \$ 1,869 2,242 37 \$ 1,910 2,291	50%
	38 \$ 2,194 2,558 39 \$ 2,243 2,616 40 \$ 2,292 2,673	60%
	41 \$ 2,559 2,924 42 \$ 2,617 2,989 43 \$ 2,674 3,055	70%
	44 \$ 2,925 3,289 45 \$ 2,990 3,363 46 \$ 3,056 3,437	80%
	47 \$ 3,290 3,655 48 \$ 3,364 3,737 49 \$ 3,438 3,819	90%
200% of Estab. Income and above	50 \$ 3,656 above 51 \$ 3,738 above	100%
100% of *Estab. Income	52 \$ 1,950 2,339 53 \$ 1,991 2,388 54 \$ 2,032 2,437	50%
	55 \$ 2,340 2,729 56 \$ 2,389 2,786 57 \$ 2,438 2,844	60%
	58 \$ 2,730 3,119 59 \$ 2,787 3,185 60 \$ 2,845 3,250	70%
	61 \$ 3,120 3,509 62 \$ 3,186 3,583 63 \$ 3,251 3,657	80%
	64 \$ 3,510 3,899 65 \$ 3,584 3,981 66 \$ 3,658 4,063	90%
200% of Estab. Income and above	67 \$ 3,900 above 68 \$ 3,982 above	100%

* Median income designated in the Federal Register of 1979.

Statutory Authority G.S. 143B-153.

.0106 MINIMUM FEE CHARGES

Fee charges will be disregarded when the total amount due is less than ten dollars (\$10.00) per month.

Statutory Authority G.S. 143B-153.

.0107 NON-PAYMENT OF FEES

Reimbursement to the county department of social services or other provider will be terminated after a service has been provided for as long as two consecutive months without full payment of the fee due for provision of that service.

Statutory Authority G.S. 143B-153.

.0108 FEES: DEMONSTRATION PROJECT

Fees for chore services provided under the Mecklenburg County Demonstration Project, shall be charged in accordance with the formula for determination of fees, available from the Department of Human Resources, Division of Vocational Rehabilitation.

Statutory Authority G.S. 143B-153.

SECTION .0200 - PURPOSE

.0201 PURPOSE OF SERVICE COST-SHARING

The purpose of the Service Cost-Sharing Policy is to extend the availability of services subject to cost-sharing that are administered by the Division of Social Services by soliciting from all clients a portion of the cost for services rendered based upon their ability to pay. Revenue collected from clients will be retained by the provider.

Statutory Authority G.S. 143B-153.

SECTION .0300 - SERVICE COST SHARING REQUIREMENTS

.0301 SERVICES SUBJECT TO SERVICE COST SHARING

(a) The following services, when provided by funds administered by the Division of Social Services, shall be subject to the Service Cost-Sharing Policies and Procedures:

- (1) Adult Day Care, including Transportation;
- (2) Adult Day Health, including Transportation;
- (3) Housing and Home Improvement (Ren-

ovations or Repair and Furnishings or Appliance Purchases only);

- (4) In-Home Aide Services;
- (5) Personal and Family Counseling;
- (6) Preparation and Delivery of Meals.

(b) When any of the services specified in Paragraph (a) of this Rule are provided to adults or children as part of a Protective Services Plan, these individuals will be excluded from any cost-sharing requirement, up to a maximum of 12 months. Children in foster care and children who have been approved to receive adoption assistance are also excluded from the cost-sharing requirement. In addition, when any of the services specified in Paragraph (a) of this Rule are provided to an Aid to Families with Dependent Children (AFDC) or federally administered Supplemental Security Income (SSI) applicant or recipient, cost-sharing requirements do not apply.

Statutory Authority G.S. 143B-153.

.0302 INITIAL REVIEW

The following information must be reviewed with each client who has been determined eligible to receive a service subject to service cost-sharing:

- (1) the policy which requires that all clients receiving services subject to cost-sharing be requested to share in the cost of services rendered, based upon their ability to pay;
- (2) the purpose of Service Cost-Sharing;
- (3) the cost of the service received (actual cost or fixed rate per unit); actual cost will typically be an estimated cost based on the previous year's data for staff time and related expenses for rendering services subject to service cost-sharing; fixed rate per unit will be the specified contract rate when purchasing services;
- (4) the process by which cost-sharing revenue will be collected;
- (5) the individual whom the client should contact with questions pertaining to service cost-sharing; and
- (6) the fact that services will not be terminated for failure to share in the cost of services rendered.

Statutory Authority G.S. 143B-153.

.0303 ANNUAL REVIEW

On at least an annual basis, preferably during a service reassessment, agencies must review the following information with each individual receiv-

ing services subject to the Service Cost-Sharing Policy:

- (1) the purpose of service cost-sharing;
- (2) the agency's cost (actual cost or fixed rate per unit) to provide the service or services received; actual cost will typically be an estimated cost based on the previous year's data for staff time and related expenses for rendering services subject to service cost-sharing; fixed rate per unit will be the specified contract rate when purchasing services;
- (3) the agency's procedures for collecting cost-sharing revenue and the individual whom the client should contact with questions pertaining to service cost-sharing; and
- (4) the fact that services will not be terminated for failure to share in the cost of service rendered.

Statutory Authority G.S. 143B-153.

.0304 INCOME DETERMINATION

Income may be self-declared by the client or his designated representative or may be verified at county option.

Statutory Authority G.S. 143B-153.

.0305 SERVICE COST-SHARING FORM

(a) A service cost-sharing form must be completed for all clients receiving services subject to cost-sharing. The form must contain the following:

- (1) the purpose of service cost-sharing;
- (2) space to list the service or services received;
- (3) space to indicate the cost (actual cost or fixed rate per unit) of the service or services to be received; actual cost will typically be an estimated cost based on the previous year's data for staff time and related expenses for rendering services subject to cost-sharing; fixed rate per unit will be the specified contract rate when purchasing services;
- (4) information regarding what procedures the agency will use to request cost-sharing revenue and whom the client should contact if he has questions regarding service cost-sharing collection procedures;
- (5) a statement indicating that services will not be terminated for failure to share in

the cost of services rendered; and space for signatures by the client or designated representative and the agency representative indicating that the form has been reviewed with the client and the date.

- (6) (b) Each client or designated representative shall be given a copy of the signed cost-sharing form and a copy shall be kept in the client's file.

Statutory Authority G.S. 143B-153.

.0306 SERVICE COST-SHARING SCHEDULE

(a) The amount of cost-sharing to be requested from clients shall be in accordance with the following cost-sharing schedule:

COST-SHARING SCHEDULE

<u>Monthly Income</u>		<u>Size of Income Unit</u>		<u>Minimum Percentage (Percentage of Service Cost)</u>
<u>100% of Estab. Income</u>	<u>1</u> <u>\$ 852-970</u> <u>971-1,090</u> <u>1,091-1,209</u> <u>1,210-1,328</u> <u>1,329-1,447</u> <u>1,448-above</u>	<u>2</u> <u>\$1,149-1,301</u> <u>1,302-1,516</u> <u>1,517-1,600</u> <u>1,601-1,761</u> <u>1,762-1,952</u> <u>1,953-above</u>	<u>3</u> <u>\$1,446-1,648</u> <u>1,649-1,850</u> <u>1,851-2,053</u> <u>2,054-2,255</u> <u>2,256-2,458</u> <u>2,459-above</u>	<u>30%</u> <u>40%</u> <u>50%</u> <u>60%</u> <u>75%</u> <u>100%</u>
<u>100% of Estab. Income</u>	<u>4</u> <u>\$1,744-1,987</u> <u>1,988-2,231</u> <u>2,232-2,475</u> <u>2,476-2,719</u> <u>2,720-2,963</u> <u>2,964-above</u>	<u>5</u> <u>\$2,041-2,326</u> <u>2,327-2,612</u> <u>2,613-2,897</u> <u>2,898-3,183</u> <u>3,184-3,469</u> <u>3,470-above</u>	<u>6</u> <u>\$2,339-2,665</u> <u>2,666-2,992</u> <u>2,993-3,320</u> <u>3,321-3,647</u> <u>3,648-3,975</u> <u>3,976-above</u>	<u>30%</u> <u>40%</u> <u>50%</u> <u>60%</u> <u>75%</u> <u>100%</u>
<u>100% of Estab. Income</u>	<u>7</u> <u>\$2,636-3,004</u> <u>3,005-3,373</u> <u>3,374-3,743</u> <u>3,744-4,112</u> <u>4,113-4,481</u> <u>4,482-above</u>	<u>8</u> <u>\$2,934-3,343</u> <u>3,344-3,754</u> <u>3,755-4,165</u> <u>4,166-4,576</u> <u>4,577-4,986</u> <u>4,987-above</u>	<u>9</u> <u>\$3,231-3,638</u> <u>3,684-4,135</u> <u>4,136-4,587</u> <u>4,588-5,040</u> <u>5,041-5,492</u> <u>5,493-above</u>	<u>30%</u> <u>40%</u> <u>50%</u> <u>60%</u> <u>75%</u> <u>100%</u>
<u>100% of Estab. Income</u>	<u>10</u> <u>\$3,529-4,022</u> <u>4,023-4,516</u> <u>4,517-5,010</u> <u>5,011-5,504</u> <u>5,505-5,998</u> <u>5,999-above</u>	<u>11</u> <u>\$4,826-4,361</u> <u>4,362-4,897</u> <u>4,898-5,432</u> <u>5,433-5,968</u> <u>5,969-6,504</u> <u>6,505-above</u>	<u>12</u> <u>\$4,124-4,700</u> <u>4,701-5,277</u> <u>5,278-5,856</u> <u>5,857-6,432</u> <u>6,433-7,009</u> <u>7,010-above</u>	<u>30%</u> <u>40%</u> <u>50%</u> <u>60%</u> <u>75%</u> <u>100%</u>

Established Income (Estab. Income) as used in this Rule is defined in 10 NCAC 35E .0104, which is incorporated by reference, including subsequent amendments and editions; Income Unit as used in this Rule is defined in 10 NCAC 35E .0103, which is incorporated by reference, including subsequent amendments and editions. Copies of these Rules may be obtained from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, N.C. 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of adoption of

this Rule.

(b) Agencies must establish a cost-sharing schedule for clients whose gross monthly income is less than the established income as defined in 10 NCAC 35E .0104, which is incorporated by reference, including subsequent amendments and editions. Copies of these Rules may be obtained from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to 10 pages and fifteen cents (\$.15) for each additional page at the time of adoption of this Rule. In developing this schedule,

agencies may establish percentages of the cost of the service or an amount that will be requested from clients.

(c) Agencies must distribute a copy of the cost-sharing schedule to all clients receiving services subject to cost-sharing as defined in Rule .0301 of this Section. The cost-sharing schedule must reflect the income ranges and minimum percentages outlined in Paragraph (a) of this Rule.

(d) Agencies may negotiate higher service cost-sharing percentages or lower service cost-sharing percentages than those outlined in Paragraph (a) of this Rule, based on individual client circumstances. The client will determine the amount of service cost-sharing he will pay based upon his individual financial circumstances.

Statutory Authority G.S. 143B-153.

.0307 COLLECTION OF COST-SHARING REVENUE

(a) Agencies must establish policies and procedures governing the collection of cost-sharing revenue at least quarterly.

(b) Agencies must document that efforts have been made to collect cost-sharing revenue at least quarterly from those clients who have agreed to share in the cost of services. This includes asking the client at least quarterly to share in the cost of services subject to cost sharing.

(c) When the county department of social services directly provides a service subject to cost-sharing, the county department of social services must be responsible for collecting and accounting for cost-sharing revenues.

(d) When a service subject to cost-sharing is provided by another agency or individual through a purchase of service contract, that provider or the county department of social services must be responsible for collecting and accounting for cost-sharing revenue. When the provider is responsible for collecting and accounting for cost-sharing revenue this must be specified in the contract for purchase of services.

(e) When a service subject to cost-sharing is purchased through a local or state-level contract, the provider must be furnished current information in writing, via the Services Information System Client Entry Form (DSS-5027), as to the amount of the cost-sharing the client has agreed to pay. This amount is to be collected from the client. Any change in the amount of cost-sharing must be transmitted to the provider via a revised DSS-5027. No cost-sharing amounts other than those identified on the most current DSS-5027 may be

collected.

Statutory Authority G.S. 143B-153.

.0308 TERMINATION OF SERVICES FOR FAILURE TO SHARE

Services to the client will not be terminated for failure to share in the cost of services rendered.

Statutory Authority G.S. 143B-153.

CHAPTER 41 - CHILDREN'S SERVICES

SUBCHAPTER 41F - LICENSING OF FAMILY FOSTER HOMES

SECTION .0700 - STANDARDS FOR LICENSING

.0704 PHYSICAL FACILITY

(a) Fire and Building Safety.

(1) All homes must meet the N. C. Uniform Residential Building Code regulations, Volume I, B. VII, which is adopted by reference including all subsequent amendments and editions. Copies of the Code may be obtained from the North Carolina Department of Insurance, Code Council Section, Post Office Box 26387, Raleigh, North Carolina, 27611, (919) 733-3901, at a cost of twenty-five dollars (\$25.00) at the time of adoption of this Rule.

(2) All homes shall be reasonably protected from all fire hazards.

(A) All exits (i.e., doors, hallways, and stairs) shall be clear and ready for use;

(B) an evacuation plan shall be developed, and all persons in the home shall be knowledgeable of the plan;

(C) all homes shall have sufficient smoke detectors and fire extinguishers;

(D) all homes shall have a telephone.

(3) Before a home is fully licensed, and annually thereafter, it must be inspected and receive a satisfactory rating on the fire and building safety inspection report completed by one of the following:

(A) county building inspector;

(B) local fire department official.

(b) Health Regulations.

(1) All homes must meet the minimum

- sanitation standards for a residential care facility as set forth by the North Carolina Health Services Commission and codified in ~~10 NCAC 10A .0200-15A NCAC 18A .1600 which is adopted by reference including all subsequent amendments and editions.~~ Copies of this Rule may be obtained from the Office of Administrative Hearings (OAH) Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$0.15) for each additional page at the time of adoption of this Rule.
- (2) Before a home ~~not on public water and sewer systems~~, is fully licensed, and annually thereafter, it must be inspected by the county sanitarian and receive a satisfactory rating on the inspection form for residential care facilities.
- (c) Environmental Regulations.
- (1) ~~The home and yard shall be maintained and repaired so that they do not appear to be hazardous to the children in care.~~
 - (2) ~~The house shall be kept free of rodents and insects and the grounds free of stray animals.~~
 - (3) ~~Outdoor areas shall be well-drained.~~
 - (4) ~~Windows and doors used for ventilation shall be screened.~~
 - (5) ~~The kitchen shall be equipped with a working stove and refrigerator, and adequate eating, cooking and drinking utensils which are properly handled and stored.~~
 - (6) ~~Household equipment and furniture shall be in good repair.~~
 - (7) ~~Inflammable and poisonous substances, medications and cleaning materials shall be stored out of the reach of young children.~~
 - (8) ~~Explosive materials, firearms and projectiles used such as darts, arrows and BB's shall be stored out of the reach of all children.~~
 - (9) ~~Ammunition and firearms shall be stored in separate locked places.~~
 - (10) ~~Household pets shall be vaccinated for rabies and documentation shall be maintained by the foster parent.~~
- (ed) Room Arrangements.
- (1) Family Room. Each home shall have a family room which shall be large enough to meet the needs of the family including foster children.
- (2) Kitchen and Dining Area. The kitchen shall be large enough for preparation of food and cleaning of dishes. The dining area shall be large enough to seat all members of the family including foster children.
- (3) Bedrooms. Bedrooms shall be clearly identified as bedrooms and shall not serve dual functions:
- (A) Space. Bedrooms can be shared only as long as a minimum of 40 square feet is provided for each child excluding closet space. Exception to this standard will be allowed for those homes in which children were living prior to July 1, 1983. No additional children may be placed in the foster home until the space standard is met.
 - (B) Sleeping Arrangements:
 - (i) No child two years of age or older shall share a bedroom with an adult except under special circumstances and with prior approval from Children's Services Branch, Foster Care Services.
 - (ii) Each child shall have his own bed except:
 - (I) siblings of same sex may share a double bed;
 - (II) two children of the same sex and near the same age may at the discretion of the foster parents and supervising agency share a double bed, but only if the children so desire.
 - (iii) Each bed shall be provided with a comfortable mattress, proper support, suitable bed coverings, and be adequate to accommodate the child.
 - (iv) No day bed, convertible sofa, or other bedding of a temporary nature shall be used except for temporary care of up to two weeks.
 - (v) Sleeping room shall not be shared by children of opposite sex. If exceptions are necessary, these should be only for children age five and under.
 - (vi) Except for infants, sleeping arrangements should be such that space is provided within the sleep-

- ing room for the child's personal possessions and for a reasonable degree of privacy.
- (vii) Shared bedrooms should take into consideration ages of children. It is recommended that a child under six should not share a room with a child over 12. No more than 4 children shall share a room.
- (C) Storage. Separate and accessible drawer space for personal belongings and sufficient closet space for indoor and outdoor clothing shall be available for each child.
- (D4) Bathrooms. There shall be adequate toilet and bathing facilities.

Statutory Authority G.S. 131D-10.5; 143B-153.

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42A - ADULT PLACEMENT SERVICES

SECTION .0300 - FOSTER CARE SERVICES FOR ADULTS

.0308 PLANNING FOR PLACEMENT INTO DOMICILIARY HOMES

(a) Social workers in the county departments of social services are responsible for assisting individuals and their families who need and want this service, which consists of locating a domiciliary home with the accommodations, services and charges suitable to their needs. The state division and county departments of social services are not allowed to make referrals to or participate in plans for placing individuals in domiciliary homes which do not sign the Civil Rights Statement of Complainant (Form DSS 1464) as required by the Civil Rights Act of 1964.

(b) When it is determined that placement into a domiciliary home is the only solution, placement planning must begin. This must include:

- (1) accepting and respecting the adult client's right to decide on and choose a domiciliary home placement. If his survival is threatened and he is incapable of making a rational choice, protective services may be necessary. See Section 6500 of Volume V of the Family Services Manual for policies related to protective services;
- (2) involving the older person and those

- close to him in placement planning;
- (3) assisting in the selection of a home which will best suit his needs;
- (4) purposeful, guided assistance in effecting the change to a new setting;
- (5) supporting the individual during and after placement through the period of adjustment to his new setting;
- (6) planning with the client, when feasible, to return home.
- (e) As a part of placement planning it is essential that the client's ambulation capacity, diagnosis and medications be evaluated and prescribed by his physician and documented on the FL 2 or MR 2 prior to placement in licensed domiciliary homes.
- (d) Service workers work closely with medical personnel to see that the appropriate kind of care is secured and that the physician is informed of the definition of ambulation capacity and requested to note the ambulation capacity on the FL 2 or MR 2.
- (e) When placement is made in a domiciliary home, form FL 2 or MR 2 is to be completed in duplicate and routed as follows:
- (1) original in client case record;
- (2) copy to the licensed home.
- (f) A current FL 2 or MR 2 must be completed every 12 months or more often if needed with the ambulation capacity always noted by the physician.
- (g) When the resident enters the domiciliary home, the following steps shall be completed:
- (1) The DSS 1865, Resident Register, must be completed;
- (2) At the time of admission the new resident, or his personal representative or responsible relative should clearly understand and agree on the services which are provided by the home, plans for payment for these services and personal money that is available to him. The policies of the home must be in writing.
- (3) When the individual is admitted to the licensed domiciliary home the written policies of the home regarding refunds to the resident for absences from the home, moving from the home or death must be clearly stated.
- (4) Plans are made with the new resident and his family or other representative for his health care.
- (5) Plans are also made for sufficient clothing and the care of his clothing to assure that the resident is always well groomed.

Statutory Authority G.S. 143B-153.

.0309 COUNTY FILES FOR RESIDENTS

(a) ~~There must be a county file on each resident in a group home who has received or is receiving services under Title XX of the Social Security Act.~~

(b) ~~When the resident does not want services or does not need services, the file may be closed. The one exception to this is when county department of social services staff has been appointed guardian for a resident who has been adjudicated incompetent. In this case it is anticipated that the file would remain open for services.~~

(c) ~~The following forms and documentation are required to support claims for financial participation and must be in the recipient's file:~~

- (1) ~~FL 2 or MR 2 which verifies the need for domiciliary home care;~~
- (2) ~~any correspondence from the social worker to the resident or correspondence to the resident's family or other agencies about the resident;~~
- (3) ~~psychologicals or social evaluations about the resident;~~
- (4) ~~social summaries from regional psychiatric hospitals or mental retardation centers; and~~
- (5) ~~evidence of continued appropriateness of services.~~

Statutory Authority G.S. 143B-153.

SECTION .0600 - SERVICE REQUIREMENTS

.0601 INTAKE AND SCREENING

(a) ~~The initial request or referral must be screened to determine whether the potential client appears to be in the target population codified in 10 NCAC 35E .0322, which is incorporated by reference, including subsequent amendments and editions. Copies of this Rule may be obtained from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of the adoption of this Rule. Documentation must reflect how the criteria in the target population were determined to be met.~~

(b) ~~When Adult Placement Services are requested, an application must be made in accordance with 10 NCAC 35D .0200, which is incorporated by reference, including subsequent amendments and editions. Copies of this Rule may be obtained~~

~~from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of the adoption of this Rule. An application is not required when the only services provided are information regarding placement options and procedures, referral to a more appropriate resource, or consultation with another service provider.~~

(c) ~~If an application for Adult Placement Services has been made by a responsible party for an individual who then refuses these services, this refusal must be honored. The social worker must offer other services and accept an application or make a referral for other services as requested by the client. If, however, Adult Placement Services or other services are authorized by one of the following legal surrogate decision-makers or by a court order, the service will be provided as requested:~~

- (1) ~~a legally appointed guardian of the person or general guardian;~~
- (2) ~~an attorney-in-fact appointed in a durable Power of Attorney, which grants relevant duties and is in effect; or~~
- (3) ~~a health care agent appointed in a Health Care Power of Attorney, which grants relevant duties and is in effect.~~

~~If there is reasonable cause to believe during the intake and screening, assessment, service planning or provision of any services that the individual is an abused, neglected or exploited disabled adult in need of protective services, an Adult Protective Services referral must be made. If there are indications that the individual may be incompetent as defined in G.S. 35A-1101(7) and needs a guardian to facilitate the provision of services, a social worker will explore options with the referral source, family members or within the agency for facilitating incompetency proceedings and the appointment of a guardian.~~

Statutory Authority G.S. 143B-153.

.0602 ASSESSMENT AND SUPPORTIVE COUNSELING

(a) ~~A thorough assessment must be conducted of the client's situation, including strengths and limitations in the following areas:~~

- (1) ~~physical health;~~
- (2) ~~mental health;~~
- (3) ~~social system;~~
- (4) ~~activities of daily living and instrumen-~~

tal activities of daily living;
(5) economic and financial circumstances;
and
(6) environment.

(b) With the exception of the circumstances listed below the client must be seen personally by the social worker as many times as is necessary to do a thorough assessment in the six areas, but a minimum of one time. The personal contact may be in a setting other than the client's home, if the client or others can provide the necessary information for an assessment of the client's living environment, and, if during the course of the assessment, it does not appear that in-home services will be needed or appropriate as an alternative to placement or as an interim service plan.

(c) For the following situations, an assessment must be done as thoroughly as possible with information and resources available to the social worker, without requiring personal contact with the client to complete the assessment.

- (1) a client who is not currently living in the county in which the application is made;
- (2) a client who is in an emergency situation, where a placement is needed quickly and personal contact would be a barrier to achieving a quick placement;
- (3) a client whose case is being transferred from one social worker to another within the agency, and an original assessment which addresses all six functional areas is available. This assessment must be updated to reflect current information;
- (4) a client who is already in a facility and is requesting Adult Placement Services, and an original assessment which addresses all six functional areas is available. This assessment must be updated to reflect current information.

(d) Documentation must reflect the reason the client was not seen personally in conducting the assessment.

Statutory Authority G.S. 143B-153.

.0603 SERVICE PLANNING

A service plan must be developed which addresses problems identified during the assessment and which takes into account client and family strengths and goals. The client must be involved in the service planning process as much as he is capable of doing so. The service plan must docu-

ment activities to meet goals.

Statutory Authority G.S. 143B-153.

.0604 PRE-PLACEMENT PROCEDURES

(a) The county department of social services is responsible for facilitating the completion and prior approval of FL-2, MR-2 and Pre-Admission Screening and Annual Resident Review (PASARR) Level I screening forms for clients receiving Adult Placement Services by following procedures codified in 10 NCAC 42C .2402, 10 NCAC 26A .0002, 10 NCAC 26B .0108 and .0114, 10 NCAC 26F .0001 and .0002, and the regulations for Pre-Admission Screening and Annual Resident Review from the Omnibus Budget Reconciliation Acts (OBRA) of 1987 and 1990 published in the Federal Register, Volume 57, No. 230, pages 56450-56514, November 30, 1992. 10 NCAC 42C .2402, 26A .0002, 26B .0108 and .0114, 26F .0001 and .0002 are incorporated by reference, including subsequent amendments and editions. Copies of these Rules may be obtained from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of the adoption of this Rule. Copies of pages 56450-56514 of Volume 57, No. 230 of the Federal Register may be obtained from the Planning and Information Section, NC Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27603-5905, (919) 733-4530, at a cost of ten cents (\$.10) per page at the time of adoption of this Rule.

(b) The facilitation of FL-2, MR-2 and PASARR form completion can be accomplished by informing the client, family or other representative of procedures for getting the forms completed and following up to see that the procedures are followed. If the client is not able to follow the procedures and has no family or representative able or willing to do so, the social worker must work more directly with the physician or other health care provider to get the form(s) completed. This includes assisting the client in locating resources for completion of the form, including transportation and a physician.

(c) A Consent for the Release of Information must be obtained for every client who is receiving Adult Placement Services. The consent must be obtained according to rules codified in 10 NCAC 24B, which are incorporated by reference, including subsequent amendments and editions. Copies of these Rules may be obtained from the

Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of the adoption of this Rule.

(d) Social work staff must inform applicants for Adult Placement Services of the availability of State/County Special Assistance for Adults or Medicaid to cover the cost of care in a facility, and the procedures for making an application if they are interested and have not already applied.

(e) Local agency procedures must be established to assure that FL-2, MR-2, and PASARR (Level I screening or notice of final determination) forms are shared among income maintenance and social work staff when they have mutual clients.

(f) The social worker must coordinate with income maintenance staff regarding the eligibility of clients receiving Adult Placement Services, and must assist the client, family or representative in following procedures to establish eligibility for income maintenance programs as needed to facilitate placement or other services.

Statutory Authority G.S. 143B-153.

.0605 LOCATING A BED AND SECURING PLACEMENT

(a) Social workers in the county departments of social services are responsible for assisting clients who are receiving Adult Placement Services and their families or representatives to locate available beds in substitute homes, residential health care facilities, or independent housing in the community with services and charges suitable to their needs. County departments are not allowed to make referrals to or participate in plans for placing individuals in domiciliary homes, nursing facilities, or any other facility placement arrangements which do not comply with the Civil Rights Act of 1964, or to provide Adult Placement Services to individuals residing in those homes or facilities.

(b) When an available and appropriate placement for a client has been located, the social worker will assist the client and his family or representative in planning for and facilitating the admissions process. If the client, family or representative is not able or willing to follow admissions procedures, the social worker will provide more direct assistance as needed to facilitate the placement.

(c) The social worker must coordinate with income maintenance staff (if applicable) to assure that eligibility for State/County Special Assistance

for Adults or Medicaid is established, assure that there is an understanding between the facility and client about how payment will be made, or assist the client in making alternate arrangements prior to the date of placement.

Statutory Authority G.S. 143B-153.

.0606 POST-PLACEMENT ADJUSTMENT

(a) County departments of social services are responsible for providing or facilitating services to assist clients receiving Adult Placement Services to adjust to their placements or independent settings. This includes clients for whom the county department has facilitated placement arrangements as well as clients already living in facilities who request or are referred for services.

(b) Adjustment services include psychosocial adjustment as well as assuring that supportive services and financial arrangements are in place.

(c) These services may be facilitated by assuring that another agency, facility staff member, family member or other representative is assisting the client with adjustment. If another agency, facility staff member, family member or representative is not assisting the client, the social worker will provide these services until a satisfactory adjustment has been made or until alternate services are in place for the client. The county department must provide or facilitate adjustment services a minimum of 30 days after the client's admission or relocation to a facility or other living arrangement.

Statutory Authority G.S. 143B-153.

.0607 TERMINATION OF ADULT PLACEMENT SERVICES

(a) Prior to Adult Placement Services being terminated, the social worker must review available information and make contacts with significant persons to determine whether services need to be continued, and to reach closure with the client and involved parties. If there are no identifiable client needs that can be addressed by the agency, or those needs are being met by another party, Adult Placement Services may be terminated in accordance with policies codified in 10 NCAC 35D .0300, which is incorporated by reference, including subsequent amendments and editions. Copies of this Rule may be obtained from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of the adoption

of this Rule. If Adult Placement Services have been ordered by the court under Adult Protective Services, services will terminate when the order expires.

(b) Contacts may be made in person, by telephone, or by letter but must allow for sufficient information to be obtained to make a determination about the need for services.

(c) Documentation must reflect the contacts which were made to make the determination.

Statutory Authority G.S. 143B-153.

.0608 COORDINATION WITH OTHER SERVICE PROVIDERS

Documentation in the client's case record must include information about other agencies or service providers who are known to be involved with the client. If any of those parties are involved in placement, adjustment, or relocation services with the client, documentation must reflect how these services are being coordinated so as not to duplicate efforts. If the placement social worker in the department of social services is the most appropriate or only source of assistance, and the client meets the criteria in the target population in 10 NCAC 35E .0322, an application must be made in accordance with 10 NCAC 35D .0200 and Adult Placement Services provided. 10 NCAC 35E .0322 and 10 NCAC 35D .0200 are incorporated by reference, including subsequent amendments and editions. Copies of these Rules may be obtained from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of the adoption of this Rule.

Statutory Authority G.S. 143B-153.

SUBCHAPTER 42J - HEALTH SUPPORT SERVICES

.0003 SCOPE OF SERVICES

Health support services are casework services designed to motivate individuals and families to utilize information and resources which will promote and preserve their optimum level of health thus increasing their potential to be happy and productive citizens:

(1) Helping individuals and families to recognize health needs includes the provision of counseling, individual or group instruction and educational materials fo-

cused on the following:

- (a) basic health needs such as nutrition, exercise, rest, cleanliness, regular physical examinations, necessary immunizations, perinatal care, maternal and child health, and family planning;
 - (b) noticeable physical problems or developmental disabilities such as speech impediments, crossed eyes, hearing difficulties, orthopedic irregularities, disfiguring scars or birth marks, skin allergies, dental cares, need for dental plates or braces, obesity, cerebral palsy, muscular dystrophy, etc.;
 - (c) identifiable mental health related problems, such as mental retardation, mental illness, emotional disturbance, alcohol or drug abuse;
 - (d) suspected chronic disease such as arthritis, emphysema, heart disease, kidney disease, diabetes, cancer, etc.;
 - (e) communicable disease such as tuberculosis, measles, mumps, polio, venereal diseases, etc.;
 - (f) physical and occupational therapy;
- (2) Helping individuals and families secure needed health services includes the following:
- (a) referring them to appropriate resources for services and treatment to meet their individual needs;
 - (b) providing help, as needed, with applying for assistance with the costs of medical and health care;
 - (c) arranging for supportive services such as transportation and child care to enable them to utilize available resources for diagnosis and treatment;
- (3) Counseling and planning with individuals, families and health providers to assure continuity of treatment and carrying out of health recommendation includes the following:
- (a) counseling with individuals and families as needed, about accepting and adjusting to health limitations;
 - (b) counseling with individuals and families regarding the importance of adhering to prescribed treatment plans by following doctors' orders and meeting all appointments for check-ups, treatment and therapy;
 - (c) help to individuals and families in scheduling appointments for continued treatment and services and in arranging

- for supportive services to enable them to keep scheduled appointments;
- (d) assistance as needed in having prescriptions for medication filled and refilled including exploration of resources available to help with the cost of medication;
- (e) assistance in locating and utilizing ancillary services to support the health plan such as ~~chore services, homemaker in-home aide~~ services, day care, preparation and delivery of meals, services to meet the special needs of the elderly, disabled or handicapped, transportation, etc.;
- (f) coordinated planning with health providers to identify needs, locate resources and develop strategies for motivating the individual and his family to carry out health recommendations;
- (g) follow-up periodically with the individual and his family to assess progress toward reaching service goals and the need for continued health support services;
- (4) Helping individuals to secure admission to medical institutions and children to secure admission to other health facilities includes the following:
- (a) counseling with the individual and his family to help them accept the need for the recommended level of care and to work through any negative feelings they may have about such a move;
- (b) assistance in locating appropriate resources and applying for admission;
- (c) help in exploring resources available for assistance with the cost of care;
- (d) arranging for supportive services such as appliances, equipment, supplies, transportation, etc.;
- (e) follow-up after admission and continuation of health support services as needed.

Statutory Authority G.S. 143B-153.

SUBCHAPTER 42Q - STATE IN-HOME SERVICES FUND

.0014 COST-SHARING

Fees Cost-sharing requirements for the following services provided under the State In-Home Services Fund shall be determined in accordance with policies governing fees for services, service cost-

sharing codified in 10 NCAC 35F, which is incorporated by reference, including subsequent amendments and editions: day care services for adults, in-home aide services, preparation and delivery of meals and housing and home improvement resource items only. (renovations or repair and furnishing or appliance purchases only). Copies of these Rules may be obtained from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of adoption of this Rule.

Statutory Authority G.S. 143B-153.

SUBCHAPTER 42R - ADULT DAY CARE - STATE FUND

SECTION .0200 - STATE ADULT DAY CARE FUND

.0204 COST-SHARING

Fees Cost-Sharing Requirements for day care services for adults provided under the state adult day care fund shall be determined in accordance with policies governing fees for services, service cost-sharing, codified in 10 NCAC 35F, which is incorporated by reference, including subsequent amendments and editions. Copies of these Rules may be obtained from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of the adoption of this Rule.

Statutory Authority G.S. 143B-153.

CHAPTER 46 - DAY CARE RULES

SUBCHAPTER 46G - NONREGISTERED DAY CARE HOME REQUIREMENTS

SECTION .0200 - REQUIREMENT FOR NONREGISTERED DAY CARE HOMES

.0214 HEALTH AND SAFETY STANDARDS

Each nonregistered day care home shall comply with the following requirements in order to maintain a safe, healthy and sanitary environment for children:

- (1) A health and emergency information form completed and signed by the child's parents or guardian shall be on file for each child who attends. The completed form must be on file on the first day the child attends with the exception of the child's immunization record which must be completed within 30 days after the first day the child attends. A recommended form is available from the section. However, the provider may use another form provided that form includes the following information:
- (a) the child's name, address, and date of birth;
 - (b) the names of individuals to whom the child may be released;
 - (c) the general status of the child's health;
 - (d) any allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or health professional;
 - (e) the names and phone numbers of persons to be contacted in an emergency situation;
 - (f) the name and phone number of the child's health provider and preferred hospital;
 - (g) authorization for the provider to administer specified medication according to the parent's instructions, if the parent so desires;
 - (h) authorization for the provider to seek emergency medical care in the parent's absence;
 - (i) a record of the child's immunizations as required pursuant to G.S. 130A-152.
- (2) The parent and provider must discuss and agree upon the methods of discipline to be used with each child. ~~Corporal punishment shall be administered only with the written consent of the parent. The use of corporal punishment is prohibited except as stipulated in G.S. 110-101.1.~~
- (3) All areas used by the children, indoors and outdoors, shall be kept clean and orderly and free of items which are hazardous to children.
- (4) First-aid supplies shall be kept in a place easily accessible to the provider but out of the reach of children.
- (5) A working telephone shall be proximate to the day care home arrangement. A written plan shall be developed that describes how the provider will access emergency assistance. Emergency phone numbers shall be readily available.
- (6) To assure the safety of children whenever they are transported, the provider, or any other transportation provider, shall comply with all applicable state and federal laws concerning the transportation of passengers. All children regardless of age or location in the vehicle shall be restrained by individual seat belts or child restraint devices.
- (7) Garbage shall be stored in waterproof containers with tight fitting covers.
- (8) The provider shall have sanitary toileting facilities, and sanitary diaper changing and handwashing facilities.
- (9) Soiled diapers shall be placed in a covered leak-proof container which is emptied and cleaned frequently.
- (10) The provider shall wash her hands after toileting and after diapering each child.
- (11) The provider shall complete and keep on file the health self-questionnaire form provided by the ~~section~~ Division.
- (12) Each provider shall obtain written proof that she is free of active tuberculosis prior to initial approval and every two years thereafter.
- (13) The provider shall serve nutritious meals and snacks appropriate in amount and type of foods served for the ages of children in care.
- (14) The provider shall provide daily opportunities for supervised outdoor play or fresh air, weather permitting.
- (15) The provider shall assure that the structure in which the day care arrangement is located has clean drinking water, an approved sanitary disposal system, weather-tight construction, and is otherwise safe for human habitation.
- (16) Fuel burning heaters used when the children are in care shall be properly vented to the outside. Fuel burning heaters, fireplaces, stoves, and portable electric heaters, when in use, shall have a securely attached guard.
- (17) A battery-operated smoke detector shall be installed in the primary caregiving area of each nonregistered day care home.
- (18) The provider shall successfully complete a basic multimedia first aid course within three months of beginning participation in this program.

Statutory Authority G.S. 143B-153(2a).

**SUBCHAPTER 46H - POLICIES FOR
PROVISION OF CHILD DAY
CARE SERVICES**

**SECTION .0100 - GENERAL
POLICIES**

.0104 TARGET POPULATIONS

(a) Mandated Target Population. Child day care services must be provided when funds and care resources are available to eligible children who need day care services to enable:

- (1) their parents to seek or maintain employment;
- (2) them to remain in their own homes during the period in which they receive protective services for children;
- (3) their parents to participate in training leading to employment.

(b) Optional Target Population. Child day care services may be provided to eligible children who need day care services to enhance their social, emotional, or cognitive development but who are not included in one of the mandated populations.

(a) Child day care services must be provided to eligible children, as defined in 10 NCAC 46H .0200, who are in one or more of the following target populations when funds and care resources are available:

- (1) Children whose parents need child care support in order to seek or maintain employment.
- (2) Children whose parents need child care support to attend school or job training activities as described in Rule .0105 of this Section.
- (3) Children who need child care assistance in order to remain in their own homes during the period in which they receive protective services for children.
- (4) Children who need child care assistance as defined by the local agency responsible for determining client eligibility and who are in licensed foster care homes or for whom the county department of social services has custody.

(b) Child day care services may be provided in the following circumstances:

- (1) Children who are eligible according to the criteria defined in either Rule .0202 or Rules .0203 and .0204 of this Subchapter whose emotional, cognitive, social or physical development is de-

layed or is at risk for delay.

(2) Children who meet the eligibility criteria for Child Welfare Services funds as provided in the North Carolina Division of Social Services' Family Services Manual, Volume I, Chapter II, and who need child care assistance as a support to the family preventive or reunification services described in the manual.

(c) Notwithstanding other rules in this Chapter, child day care services may be provided to children in counties participating in the Early Childhood Education and Development Initiatives Program authorized by Part 10B of Article 3 of Chapter 143B of the North Carolina General Statutes, provided that the child care services are included in the county's Early Childhood Education and Development Plan as approved by the Department of Human Resources.

(d) When the availability of funding is less than the amount needed to serve all eligible children, the local agency responsible for determining child eligibility for subsidized child care services may establish the priority in which the target populations identified in Paragraphs (a) through (c) of this Rule will be served. The order of priority shall be stated in writing and made available to applicants for child care assistance.

Statutory Authority G.S. 143B-153.

**CHAPTER 47 - STATE\COUNTY
SPECIAL ASSISTANCE**

**SUBCHAPTER 47B - ELIGIBILITY
DETERMINATION**

**SECTION .0400 - ELIGIBILITY
FACTORS**

.0404 RESERVE

(a) **Eligibility Requirement.**

- (1) To determine eligibility, the income maintenance caseworker shall count only resources that are currently available to the applicant or recipient. For applications, only those resources that are available during any month prior to disposition are counted to determine eligibility for those months. A resource shall be considered available not only when it is actually available but also when the applicant or recipient has a legal interest in a resource and can make it available.

- (A) When a representative alleges that an applicant or recipient is mentally incompetent (and the allegation can be supported by a physician's statement) and does not have a legal representative appointed to act in his behalf, the resources held solely by the applicant or recipient or held jointly shall be excluded in determining countable reserve provided the following two conditions are met:
- (i) the petition to have an applicant or recipient declared incompetent is filed with the court within 30 calendar days from the date the applicant's or recipient's representative is informed of the requirement; and
 - (ii) the petition to have a legal guardian appointed is filed with the court within 30 calendar days of the date the applicant's or recipient's representative is informed of the requirement.
- (B) The county department of social services shall petition the court for incompetency and appointment of a guardian if:
- (i) the applicant or recipient has no representative willing to act in his behalf or the representative or guardian refuses to take the required action. The county shall petition the court to have the applicant or recipient declared incompetent and to have a guardian appointed within 30 calendar days from the date it learns of the representative's refusal; or
 - (ii) the applicant's or recipient's representative fails to take the required action within 30 calendar days of the date he was informed of the requirement. The county shall within 15 calendar days from this date, petition the court to have the applicant or recipient declared incompetent and to have a legal guardian appointed.
- If the county department of social services is required to act under Subparagraph (B)(i) or (ii), the resources held solely by the applicant or recipient or held jointly shall be excluded in determining countable reserve.
- (C) When the court rules that the applicant or recipient is competent, his resources shall be counted beginning the first day of the month following the month he is declared competent.
- (D) When the court declares the applicant or recipient incompetent and appoints a guardian, the guardian must take appropriate action to dispose of or make exempt the resource within 30 calendar days of his appointment. If he does not, the county department of social services shall determine if the guardian is acting appropriately under the terms of the guardianship.
- (E) If the guardian takes the appropriate action to dispose of or make exempt the resource, the resource shall be excluded until the clerk of court confirms the action taken by the guardian. The resource, if otherwise includable, shall be counted in reserve beginning the first day of the month following the month the action is confirmed by the clerk of court.
- (2) The maximum reserve allowance for a special assistance applicant/recipient shall be allowed to reserve resources in the following amounts: the same amount as the Medicaid-Aid to the Aged, Blind, and Disabled medically needy coverage group. The couple amount shall apply regardless of whether each spouse qualifies for Special Assistance in his own right.
- (A) One thousand dollars (\$1,000) for one person.
- (B) One thousand one hundred dollars (\$1,100) for a couple regardless of whether each spouse qualifies for Special Assistance in his own right.
- If the reserve level exceeds the amount allowed for the number in the budget unit, the case is ineligible.
- (b) Individuals Whose Reserve is Counted.
- (1) Unless the spouse is in another assistance unit, his reserve shall be counted unless the couple is separated or divorced. If the spouse is in another assistance unit, only the applicant or recipient's share shall be counted.
- (2) Jointly Owned Resources.

- (A) If a budget unit member owns resources jointly with another public assistance recipient, his share shall be counted as an available resource. The resource shall be divided equally unless the owners have a signed agreement specifying division.
- (B) If a budget unit member owns resources jointly with a non-assistance recipient, and he can dispose of the resource without the consent of the other owner, his share shall be counted as an available resource.
- (C) If a budget unit member owns resources jointly with a non-assistance recipient, and he cannot dispose of the resource without the consent of the other owner it shall be determined whether the non-assistance recipient consents to the disposal of the resource.
 - (i) If he consents, the budget unit member's share of the resource shall be counted.
 - (ii) If he refuses, the budget unit member's share shall not be counted.
- (c) Group I - reserve items counted:
 - (1) cash on hand;
 - (2) the current balance of savings accounts;
 - (3) that portion of a checking account other than the monthly income deposited to meet the family's needs;
 - (4) cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);
 - (5) equity (tax value less encumbrances) in non-essential motor vehicles;
 - (6) equity (tax value less encumbrances) in excess of one thousand dollars (\$1,000) in an essential motor vehicle. The vehicle must be needed by a family member to:
 - (A) obtain medical treatment,
 - (B) obtain or retain employment,
 - (C) transport handicapped family members as needed, or
 - (D) go shopping;
 - (7) stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
 - (8) promissory notes, if salable;
 - (9) revocable trust funds (revocable means the budget unit member has access to the trust);
 - (10) net proceeds from a business, including a farm, which has been discontinued; and
 - (11) equity (tax value less encumbrances) in real property not used as a home or producing an income.
- (d) Group I - reserve items excluded:
 - (1) personal effects and household goods;
 - (2) personal property including but not limited to:
 - (A) a mobile home used as a homesite;
 - (B) a motorized mobile home;
 - (C) boats and trailers;
 - (D) campers; and
 - (E) farm or business equipment;
 - (3) equity (tax value less encumbrances) of one thousand dollars (\$1,000) or less in an essential motor vehicle;
 - (4) income producing property; Only that portion of the property which is used to produce an income shall be excluded; The property shall continue to be excluded when it produces no income because of factors beyond the recipient's control;
 - (5) term life insurance;
 - (6) burial insurance and pre-paid burial contracts;
 - (7) the cash value of life insurance policies when the total face value of all policies that accrue cash value does not exceed one thousand five hundred dollars (\$1,500);
 - (8) relocation assistance payments received under Title XX of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
 - (9) that portion of the monthly income deposited in a checking account to meet the family's needs;
 - (10) real property used as a home when the recipient's personal belongings remain in the home and he continues to state his intent to return or his dependents live in the home; Limited to a house plus contiguous property with tax value of twelve thousand dollars (\$12,000) or less;
 - (11) life estate or remainder interests;
 - (12) heir property; Heir property is a descendant's undivided interest in real property owned in common with other descendants; and

- (13) value of burial plots.
- (e) Group II - reserve items counted:
 - (1) cash on hand;
 - (2) the current balance of savings accounts;
 - (3) that portion of a checking account other than the monthly income deposited to meet the family's needs;
 - (4) cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);
 - (5) tax value of non-essential personal property limited to:
 - (A) tax value in excess of one thousand two hundred dollars (\$1,200) in all motor vehicles except for Paragraph (f) of this Rule;
 - (B) a mobile home not used as a homesite;
 - (C) boats, boat trailers, and boat motors;
 - (D) campers;
 - (E) farm or business equipment which is not used to produce an income; and
 - (F) motorized mobile homes;
 - (6) tax value of income producing personal property when equity is in excess of six thousand dollars (\$6,000);
 - (7) tax value of income producing personal property which does not yield a net annual income of at least six percent of the property's equity;
 - (8) tax value of income producing real property not used as a home when the equity is in excess of six thousand dollars (\$6,000);
 - (9) tax value of income producing real property not used as a home which does not yield a net annual income of at least six percent of the property's equity;
 - (10) tax value of real property not used as a home [limited to house and contiguous land with tax value of twelve thousand dollars (\$12,000) or less];
 - (11) stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
 - (12) promissory notes, if salable;
 - (13) revocable trust funds (revocable means the budget unit member has access to the trust);
 - (14) value of pre-paid revocable burial contracts;
 - (15) net proceeds from a business, including a farm, which has been discontinued;
 - (16) life estate interest, if salable;
 - (17) remainder interest, if salable; and
 - (18) amount of reverse mortgage remaining in the month following the month of receipt.
- (f) Group II - reserve items excluded:
 - (1) personal effects and household goods;
 - (2) mobile home used as a homesite;
 - (3) one essential motor vehicle of any value which is:
 - (A) specially equipped for use by a handicapped individual; or
 - (B) used to obtain medical treatment; or
 - (C) used to obtain or retain employment;
 - (4) tax value of one thousand two hundred dollars (\$1,200) or less from the value of other motor vehicles;
 - (5) income producing personal property when the equity does not exceed six thousand dollars (\$6,000);
 - (6) income producing property when the annual yield is at least six percent of the equity;
 - (7) real property used as a home [limited to a house and contiguous land with tax value of twelve thousand dollars (\$12,000) or less]. The applicant or recipient must have a written statement from a physician indicating that he is to return home within six months from the date of entry into the facility or his spouse and/or dependent children remain in the home;
 - (8) term life insurance;
 - (9) burial insurance;
 - (10) the cash value of life insurance policies when the total face value of all policies that accrue cash value does not exceed one thousand five hundred dollars (\$1,500);
 - (11) relocation assistance payments received under Title XX of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
 - (12) that portion of the monthly income that is deposited in a checking account to meet the family's needs;
 - (13) non-salable life estate;
 - (14) non-salable remainder interest;
 - (15) heir property (heir property is a descendant's undivided interest in real property owned in common with other descendants);
 - (16) value of burial plots;
 - (17) irrevocable burial contract; and

- (18) reverse mortgages in the month of receipt.
- (g) Verification. Reserve items must be verified and documented in the applicant or recipient's case record.

Statutory Authority G.S. 108A-41; 108A-46; 143B-153.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rule cited as 11 NCAC 6A .0802.

The proposed effective date of this action is February 1, 1994.

The public hearing will be conducted at 10:00 a.m. on December 7, 1993 at the Dobbs Building, 3rd Floor Hearing Room, 430 North Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: Establishes a continuing education course for surplus lines licensees and makes technical amendments.

Comment Procedures: Written comments may be sent to George Brown at P.O. Box 26387, Raleigh, NC 27611. Oral presentations may be made at the public hearing. Anyone having questions should call George Brown at (919) 733-7487 or Ellen Sprenkel at (919) 733-4529.

CHAPTER 6 - AGENT SERVICES DIVISION

SUBCHAPTER 6A - AGENT SERVICES DIVISION

SECTION .0800 - CONTINUING EDUCATION

.0802 LICENSEE REQUIREMENTS

(a) Life, ~~accident~~, and health licensees shall obtain 12 ICECs during each calendar year in approved life, ~~accident~~, and health courses.

(b) ~~Fire and casualty~~ Property and liability licensees shall obtain 12 ICECs during each calendar year in approved ~~fire and casualty~~ property and liability courses.

(c) Accident and health licensees shall obtain 12 ICECs during each calendar year in approved ~~accident and~~ health courses.

(d) Any person holding more than one license to which this Section applies shall obtain 18 ICECs during each calendar year, including a minimum of six ICECs for each kind of license.

(e) An instructor shall receive the maximum ICECs awarded to a student for the course.

(f) Licensees shall not receive ICECs for the same course more often than one time in any three calendar year period except when there are major revisions within the course. The Commissioner shall determine whether the revisions are substantial enough to qualify for additional ICECs within a three calendar year period.

(g) Licensees do not have to obtain ICECs for the calendar year in which they are initially licensed.

(h) Licensees shall receive ICECs for a course only for the calendar year in which the course is completed. Any course requiring an examination shall not be considered completed until the licensee passes the examination.

(i) Licensees shall not receive ICECs for courses completed prior to January 1, 1991.

(j) Licensees shall maintain records of all ICECs for three years following the obtaining of such ICECs, which records shall be available for inspection upon the Commissioner's request.

(k) Nonresident licensees who meet continuing education requirements in their home states meet the continuing education requirements of this Section. Nonresident licensees whose home states have no continuing education requirements shall meet the requirements of this Section, except for the mandatory statute and rule update.

(l) Licensees shall be required to complete only the mandatory statute and rule update prescribed in Paragraph (p) of this Rule if they:

- (1) are age 65 or older; and
- (2) have been continuously licensed in the line of insurance for at least 25 years; and either
- (3) hold a nationally recognized professional designation for the line of insurance. Acceptable designations include those listed in 11 NCAC 6A .0803 (a) and (b); or
- (4) meet the requirements of Subparagraphs (1) and (2) of this Paragraph and certify to the Department of Insurance annually they are inactive agency owners who neither solicit applications for insurance nor take part in the day to day opera-

tion of the agency.

(m) Courses completed prior to the issue date of a new license do not meet the requirements of this Section for that new license.

(n) No credit will be given for courses taken before they have been approved by the Department.

(o) Persons who hold adjuster licenses shall obtain 12 ICECs during each calendar year in approved ~~fire and casualty~~ property and liability courses, including, in calendar year 1993 and each even-numbered calendar year thereafter, the mandatory statute and rule update required by Paragraph (p) of this Rule. As used in this Section, "licensee" includes a person who holds an adjuster license and who is required to comply with this Section.

(p) In calendar year 1994 and in each even-numbered calendar year thereafter, each licensee shall complete an approved course that comprises information about and instruction in insurance and insurance-related statutes and administrative rules, including recent changes or developments in those statutes and rules. The Commissioner may also approve courses that also include relevant court decisions.

(q) Each agent holding an active surplus lines license with an effective date before January 1, 1994, must take a surplus lines course as part of the agent's 1994 property and liability continuing education requirement. Each agent issued a surplus lines license in 1994 must take a surplus lines course as part of the agent's 1995 property and liability continuing education requirement.

Statutory Authority G.S. 58-2-40; 58-33-130.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rule cited as 11 NCAC 10 .1208.

The proposed effective date of this action is February 1, 1994.

The public hearing will be conducted at 10:00 a.m. on December 7, 1993 at the Dobbs Building, 3rd Floor Hearing Room, 430 North Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: Necessary to carry

out the provisions of a recent act of the General Assembly.

Comment Procedures: Written comments may be sent to Dave Diehl at P.O. Box 26387, Raleigh, NC 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Dave Diehl at (919) 733-3368 or Ellen Sprenkel at (919) 733-4529.

Editor's Note: This Rule was filed as a temporary adoption effective October 11, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 10 - PROPERTY AND CASUALTY DIVISION

SECTION .1200 - FORMS FILINGS

.1208 HEALTH CARE PROVIDER DEFINED; CGL POLICIES

As used in G.S. 58-40-140, "health care provider" means any person who, under Chapter 90 of the General Statutes is licensed, registered, or certified to engage in the practice of or performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology; or a hospital as defined by G.S. 131E-76(3); or a nursing home as defined by G.S. 131E-101(6); or any other person who is legally responsible for the negligence of such person, hospital, or nursing home; or any other person acting at the direction or under the supervision of any such person, hospital, or nursing home.

Statutory Authority G.S. 58-2-40; 58-40-140.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rules cited as 11 NCAC 12 .1304, .1306 and .1307.

The proposed effective date of this action is February 1, 1994.

The public hearing will be conducted at 10:00 a.m. on December 7, 1993 at the Dobbs Building, 3rd Floor Hearing Room, 430 North Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: Recent enactment of the General Assembly.

Comment Procedures: Written comments may be sent to Rodney Finger at P.O. Box 26387, Raleigh, NC 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Rodney Finger at (919) 733-5060 or Ellen Sprenkel at (919) 733-4529.

Editor's Note: These Rules were filed as temporary amendments effective October 11, 1993 for a period of 180 days or until the permanent rules become effective, whichever is sooner.

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .1300 - SMALL EMPLOYER GROUP HEALTH COVERAGE

.1304 COMPLIANCE

(a) Each carrier and third party administrator shall file a report on North Carolina small employer group insurance activity annually on or before March 15, which report shall describe case characteristics and numbers of health benefit plans in various categories marketed or issued to small employers. The report shall be in a format prescribed by the Commissioner.

(b) On and after August 14, 1992, each carrier shall offer both statutory plans to any small employer whose application for coverage the carrier refused if the refusal occurred on or after January 1, 1992, but before August 14, 1992. This offer may be made at the anniversary of the declination, but not later than August 13, 1993.

(e) A carrier that offers coverage to a small employer shall offer coverage to each eligible employee and to each eligible dependent. The

(b) Each carrier shall provide the same health benefit plan to those eligible employees and dependents.

(c) (d) A carrier shall not set contribution and participation requirements for the statutory plans that are more restrictive than those for the carrier's nonstatutory plans.

(e) In applying minimum participation requirements for a small employer and in determining whether the applicable percentage of participation is met, a carrier shall not consider employees or dependents who have existing coverage, whether the coverage is through another employer based health benefit plan, an individual health insurance policy, Medicare, or Medicaid.

(d) If any eligible employee or dependent has qualifying existing coverage, as defined in G.S. 58-50-130(a)(5), and therefore does not participate in the employer's health benefit plan, a carrier is not required to issue or renew the employer's plan unless either:

- (1) at least two eligible employees in a group of seven or less elect to participate; or
- (2) at least 25 percent of eligible employees in a group of more than seven elect to participate.

(e) (f) Each carrier shall offer both statutory plans to any small employer upon request or if the carrier is unable to issue a nonstatutory plan to the small employer applicant.

(f) (g) A carrier shall provide an extension of benefits to any insured who is a hospital inpatient until the insured is released by the hospital if the insured's existing coverage would end during the insured's hospital stay and if replacement coverage is not available to the insured, subject to the continued payment of monthly premiums or dues by the insured.

(g) (h) New business applications submitted to a carrier on and after September 1, 1992, shall be accompanied by a statement signed by the producer and the small employer applicant that certifies that the employer understands that the firm may elect coverage under the statutory plans. The disclosure form shall be made part of such statement. A copy of the signed statement and disclosure form must be provided to the small employer applicant. The disclosure form shall be in a form prescribed by the Commissioner.

(h) (i) If a carrier establishes more than one class of business under G.S. 58-50-113, the carrier shall maintain at least one basic and standard health care plan in each class of business so established. Nothing in this Section prevents a carrier from offering the statutory plans through an association or multiple employer trust.

Statutory Authority G.S. 58-2-40(1); 58-50-105; 58-50-113; 58-50-120(c)(4); 58-50-120(c)(6); 58-50-125(d); 58-50-130(a)(2); 58-50-130(a)(5); 58-50-130(d); 58-50-130(f).

.1306 REINSURANCE POOL

~~(a) Conditions and procedures regarding participation in and administration of the Pool shall be promulgated by the Board.~~

(a) (b) Reinsurance is available for coverage of eligible employees, their dependents, or the entire small employer group under any health benefit plan issued as new business by a reinsuring carrier to an eligible small employer on and after August 14, 1992. Reinsurance is also available to eligible small employers who were refused coverage between January 1, 1992 and August 13, 1992, and were subsequently issued a statutory plan.

(b) (e) Subject to any other restrictions of this Section, a reinsuring carrier may reinsure an eligible employee, an eligible employee's dependent, or a small employer group who has insurance coverage under any health benefit plan subject to the Act.

~~(d) Reinsurance is available for coverage of a late enrollee as of the effective date of his or her coverage, subject to any other restrictions of this Section.~~

(c) (e) No carrier or producer shall disclose to insureds that their coverage is reinsured by the Pool.

(d) (f) A reinsuring carrier shall apply for reinsurance within 60 days after the effective date of coverage. A reinsuring carrier's decision to reinsure a risk shall be based on the review of underwriting taken at the time of application. The decision may not be based on the small employer group's claims that have accrued since the effective date of coverage.

(e) (g) Reinsurance coverage may remain in effect, in the reinsuring carrier's and the Pool's discretion, as long as the reinsured coverage remains in effect. When the reinsured coverage terminates, reinsurance will be terminated.

(f) (h) A reinsuring carrier may terminate reinsurance on an individual or a group without terminating the reinsured coverage; and that reinsuring carrier shall not thereafter apply for reinsurance for the person or persons covered.

(g) (h) A reinsuring carrier may reinsure a previously-declined individual upon enrollment in a health benefit plan or within 60 days after that enrollment, subject to any restrictions of this Section.

(h) (i) Any reinsuring carrier whose health benefit plan also covers extra eligibles may not reinsure the coverage of those extra eligibles.

(i) (k) Any new entrant in a health benefit plan may be reinsured on the effective date of his or her coverage but no later than 60 days after that

date, subject to any other restrictions of this Section.

Statutory Authority G.S. 58-2-40(1); 58-50-130(b)(4); 58-50-150(a); 58-50-150(f)(5); 58-50-150(g).

.1307 GUARANTEED ISSUE AND RENEWAL

(a) No carrier shall decline an application for coverage under the statutory plans. A carrier may continue to issue health benefit plans other than the statutory plans.

(b) If an eligible employee commits fraud or makes material misrepresentation to a carrier, the carrier may rescind coverage for that employee. If the small employer commits fraud or makes a material misrepresentation to a carrier, the carrier may rescind coverage for that entire small employer group.

(c) The late enrollee provision in G.S. 58-50-130(a)(4) applies to all health benefit plans subject to the Act.

(d) Any health benefit plan covering an employer that by definition becomes a small employer is not subject to the Act until the next anniversary date of that plan.

(e) Any health benefit plan covering a small employer that by definition loses its status as a small employer is subject to the Act until the next anniversary date of that plan. At that time, the carrier shall determine if the employer is by definition a small employer. If the employer is not a small employer, the carrier may terminate the plan. If the carrier does not terminate the plan, the carrier shall amend the plan with riders or endorsements to comply with requirements of statutes and rules that were not reflected in the plan before the anniversary date.

(f) Before a plan anniversary date, a small employer may request that coverage be changed from one statutory plan to another statutory plan.

~~(g) All health benefit plans subject to the Act that are delivered, issued for delivery, renewed, or continued in this State or covering persons residing in this State on and after August 14, 1992, must provide coverage for all eligible employees and their dependents who are willing and able to participate regardless of their health and without exclusionary riders or modifications of coverage of any kind. Carriers are not required to issue other health benefit plans subject to the Act upon request; but if such plans are issued, a carrier must issue coverage to all eligible employees and their dependents who are willing and able to participate.~~

~~without exclusionary riders or modifications of coverage of any kind.~~

(h) Previously declined individuals shall be provided open enrollment periods in which they may enroll in the health benefit plan in force for the small employer group. This enrollment period shall be no less than 30 days and shall begin no later than the first plan anniversary date that falls on or after August 14, 1992. If a small employer chooses not to renew an existing health benefit plan on or after August 14, 1992, any subsequent carrier shall provide the open enrollment period for previously declined individuals.

(g) (f) Previously declined individuals are not late enrollees unless they fail to enroll during their initial enrollment periods.

(h) (f) On the next health benefit plan anniversary date that falls on or after August 14, 1992, a carrier shall remove all exclusionary riders or conditional modifications on any health benefit plan that is subject to the Act.

(i) (f) A carrier may base termination on non-payment of premium; and shall apply termination decisions uniformly to all of the carrier's small employer group business.

(j) (f) A carrier is not required to issue a statutory plan to a small employer if within the prior 12 months the carrier terminated a health benefit plan of the small employer because the employer:

- (1) failed to pay the premium;
- (2) committed fraud or materially misrepresented information necessary to determine the group size, group participation rate, or the group premium rate; or
- (3) failed to materially comply with a health benefit plan provision, including carrier requirements for employee group premium contributions.

(k) (m) All health benefit plans subject to the Act that were delivered, issued for delivery, renewed, or continued in this State or covering persons residing in this State on or after January 1, 1992, must be guaranteed renewable, except for the reasons listed in G.S. 58-50-130(a)(3).

(l) (n) Each carrier shall provide an open enrollment period for a new entrant to be added to the health benefit plan. The open enrollment period shall be at least 30 days in length. A new entrant who is a new eligible employee shall be added to the plan within 90 days of his or her employment. A new entrant who is a dependent shall have an open enrollment period of at least 30 days, beginning on the date he or she becomes a dependent of an eligible employee, if the eligible employee has coverage. If a new entrant does not apply for

coverage by the end of the open enrollment period, he or she is a late enrollee unless he or she meets the requirements of G.S. 58-50-110(14)a, b, or c.

Statutory Authority G.S. 58-2-40(1); 58-50-105; 58-50-125(d); 58-50-125(e)(1); 58-50-130(a); 58-50-130(h).

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rule cited as 11 NCAC 16 .0205.

The proposed effective date of this action is February 1, 1994.

The public hearing will be conducted at 10:00 a.m. on December 7, 1993 at the Dobbs Building, 3rd Floor Hearing Room, 430 North Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: This data item is needed to help determine credibility factors and also utilization rates.

Comment Procedures: Written comments may be sent to Walter James at P.O. Box 26387, Raleigh, NC 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Walter James at (919) 733-3284 or Ellen Sprenkel at (919) 733-4529.

CHAPTER 16 - ACTUARIAL SERVICES DIVISION

SECTION .0200 - INDIVIDUAL ACCIDENT AND HEALTH INSURANCE

.0205 DATA REQUIREMENTS FOR RATE REVISION SUBMISSION

With respect to any individual accident and health insurance policy governed by Articles 1 through 64 of Chapter 58 for which an adjustment of premium rate to in force policies is allowed by law, the insurer shall submit an actuarial memorandum describing and demonstrating the development of any requested premium rate revision. The actuarial memorandum shall contain a subsection clearly identified as "Additional Data Requirements." The initial rate revision filing shall be submitted to and stamped received by the Depart-

ment's Life and Health Division. An insurer shall submit all data required by this Rule within 45 days after the date that the initial rate revision filing is stamped received. Subsequent data submissions on incomplete initial rate revision filings shall be made directly to the Department's Actuarial Services Division within the 45 day period. An insurer may continue to submit data in accordance with data submission procedures followed before the effective date of this Rule for a period not to exceed one year after the effective date of this Rule if an authorized officer of the insurer certifies to the Commissioner that the insurer's current information system cannot assemble data as required by this Rule. The data required in the "Additional Data Requirements" subsection shall include:

- (1) Identification of the submitted data as North Carolina or countrywide and consistent use of this data identification throughout this Section.
- (2) Identification of all policy forms by approved North Carolina policy form number.
- (3) The month, year, and percentage amount of all previous rate revisions.
- (4) The month and year that the rate revision is scheduled to be implemented (hereinafter referred to as the "implementation date").
- (5) The type of renewability provision contained in each policy form, e.g. guaranteed renewable.
- (6) The type of coverage provided by each policy form, e.g. medical expense.
- (7) The National Association of Insurance Commissioners minimum guideline loss ratio and, if different, the insurer's minimum guideline loss ratio.
- (8) The average annual premium for North Carolina and countrywide before and after the implementation of the rate revision.
- (9) The number of North Carolina and countrywide policyholders affected by the rate revision.
- (10) The requested rate revision percentage attributable to experience.
- (11) The requested rate revision percentage attributable to changes in benefits promulgated by Medicare, if applicable.
- (12) Identification and actuarial justification of all groupings of policy forms.
- (13) The historical calendar year earned premium subdivided by duration and ex-

pressed on an actual and a current premium rate basis for the period of time from the earliest date that experience is recorded to the most recent date experience is recorded.

- (14) The "expected" incurred loss ratios by duration based upon original pricing assumptions for duration one through the latest duration contained within the fifth year following the implementation date.
- (15) The "expected" lapse rates by duration based upon original pricing assumptions for duration one through the latest duration contained within the fifth year following the implementation date.
- (16) The "actual" lapse rates for duration one through the duration coinciding with the calendar year for which the most recent experience is recorded.
- (17) The historical calendar year incurred claims, for other than Medicare supplement insurance, covering the period of time from the earliest date that experience is recorded to the most recent date experience is recorded.
- (18) The historical calendar year incurred claims, for Medicare supplement insurance, expressed on an actual and a current benefit level basis covering the period of time from the earliest date experience is recorded to the most recent date experience is recorded.
- (19) A count of the number of incurred claims for each calendar year of data provided; which means the total number of claims reported during the calendar year (whether paid or in the process of payment), plus the number of incurred but not reported claims at the end of the calendar year, minus the number of incurred but not reported claims at the beginning of the calendar year. For disability income insurance, only the initial claim payment for each period of disablement shall be counted. For each type of medical expense benefit, only the initial claim payment per cause shall be counted; for example, payments for continuation of a claim, such as refills on a prescription drug, are to be excluded from the incurred claim count.
- (20) (19) An estimation of the amount of policy year exposure contributed by all policyholders within each calendar year of data provided.

- (21) (20) A statement declaring whether this is an open block of business or a closed block of business.
- (22) (21) An estimation of the annual earned premium on new issues for the period of time from the date that the most recent experience is last recorded to a date not exceeding the fifth year following the implementation date.
- (23) (22) The number of months that the rate will be guaranteed to an individual policyholder.
- (24) (23) The rate revision implementation method, such as the next premium due date following a given date, the next policy anniversary date, or otherwise; if otherwise, an explanation must be included.
- (25) (24) A statement declaring the month and year of the earliest anticipated date of the next rate revision.
- (26) (25) An explanation and actuarial justification of the apportionment of the aggregate rate revision within each policy form or between policy forms that have been grouped; and a demonstration that the apportionment of the aggregate rate revision yields the same premium income as if the rate revision had been applied uniformly.
- (27) (26) An explanation and actuarial justification, if applicable, for changing any factor that affects the premium.
- (28) (27) An explanation of the effect that the rate revision will have on the incurred loss ratio on those policies in force for three years or more as exhibited in the Medicare Supplement Experience Exhibit of the Annual Statement.
- (29) (28) The name, address, and telephone number of an insurance company representative who will be available to answer questions relating to the rate revision.

Statutory Authority G.S. 58-2-40(1); 58-51-95; 58-63-15(7)b.

**TITLE 15A - DEPARTMENT OF
ENVIRONMENT, HEALTH, AND
NATURAL RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Coastal Management intends to amend rules cited as 15A NCAC 7H

.0104 and .0304.

The proposed effective date of this action is April 1, 1994.

The public hearings will be conducted on the following dates and locations:

4:00 p.m.
November 18, 1993
Ramada Inn
1701 South Virginia Dare Trail
Kill Devil Hills, NC

7:00 p.m.
November 22, 1993
Currituck Co. Satellite Office
1123 Ocean Trail
Corolla, NC 27927

7:00 p.m.
November 30, 1993
Marine Fisheries Bldg.
3441 Arendell St.
Morehead City, NC 28557

7:00 p.m.
December 1, 1993
Old Fire Station
Town of N. Topsail Beach
1 Gray St.
Topsail Beach, NC 28445

7:00 p.m.
December 2, 1993
Ocracoke School
State Rd. 1325
Off Hwy. 12
Ocracoke, NC 27960

7:00 p.m.
December 6, 1993
Town of Surf City
Town Hall
214 N. New River Dr.
Surf City, NC 28445

7:00 p.m.
December 7, 1993
Wilmington Regional Office
127 Cardinal Dr. Extension
Wilmington, NC 28405-3845

7:00 p.m.
December 8, 1993
Brunswick County Public
Assembly Building
45 Courthouse Drive
Bolivia, NC 28422

Reason for Proposed Action:

15A NCAC 7H .0104 - *Proposed amendments will make exceptions to the new Erosion Rates for development that has been planned on existing lots.*

15A NCAC 7H .0304 - *Proposed amendments will incorporate the updated 1992 rates of shoreline change into CAMA for use in delineating the Ocean Hazard Area of Environmental Concern and for determining setbacks for oceanfront development. These rates are periodically updated to include recent trends into the long term average rate of change.*

Comment Procedures: All persons interested in this matter are invited to attend the public hearings. The Coastal Resources Commission will receive mailed written comments postmarked no later than December 17, 1993. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearings. Additional information concerning the hearings or the proposals may be obtained by contacting Dedra Blackwell, Division of Coastal Management, PO Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

Editor's Note: *Text shown in Bold Italics in Rule .0304 was adopted by the agency on September 24, 1993. These changes are pending review by the Rules Review Commission for an effective date of December 1, 1993.*

CHAPTER 7 - COASTAL MANAGEMENT

**SUBCHAPTER 7H - STATE GUIDELINES
FOR AREAS OF ENVIRONMENTAL
CONCERN**

**SECTION .0100 - INTRODUCTION AND
GENERAL COMMENTS**

**.0104 DEVELOPMENT INITIATED PRIOR
TO EFFECTIVE DATE OF
REVISIONS**

(a) The following Rules shall be used to determine whether the revisions to guidelines for development in areas of environmental concern (hereinafter referred to as revisions), with an effective date of June 1, 1979, shall apply to a proposed development.

(1) In the case of a development for which a CAMA permit was required prior to June 1, 1979, the revisions shall not be applicable if a complete and sufficient application for a CAMA permit was filed and accepted before June 1, 1979. However if the application should lapse or be denied, thereby requiring a new application after June 1, 1979, or if the application is modified or renewed after June 1, 1979, the revisions shall be made applicable.

(2) In the case of a development for which no CAMA permit was required prior to July 15, 1979, the revisions shall not be applicable if all legally required permits have been applied for and accepted in accordance with the applicable rules of the agency responsible for the permit. However, if the application should lapse or be denied, thereby requiring a new application after July 15, 1979, or if the application is modified or renewed after July 15, 1979, the revisions shall be applicable.

(3) In those cases where a CAMA major permit was issued before June 1, 1979, for a major development which included platted lots, the new standards shall apply to such platted lots only to the maximum extent possible without effectively prohibiting the intended use of those lots. In order for this Rule to apply, the following conditions must be met:

(A) the lot on which the proposed development is to be located shall have been accurately shown on the major development permit application and the boundaries must not have been significantly altered.

(B) the lot on which the proposed development is to be located shall have been suitable for the intended use according to the AEC guidelines in effect at the time the major permit was issued.

(C) a minor development permit must be applied for and received according to

- the normal minor permit process before development can begin.
- (D) this Rule shall apply only to development for which a permit application is submitted prior to expiration of the major development permit issued before June 1, 1979.
- (4) In those cases where any necessary local approval was issued for a proposed subdivision development prior to July 15, 1979, the Division of Coastal Management advised the developer in writing where to locate the ocean setback line for the proposed subdivision, and the proposed subdivision development was recorded in the county registry prior to July 15, 1979, with the ocean setback determined by the Division of Coastal Management, any new standards regarding oceanfront setbacks shall apply to the platted lots within the proposed subdivision only to the maximum extent possible without effectively prohibiting the intended use of those lots. In order for this Rule to apply, the following conditions must be met:
- (A) the lot(s) on which the proposed development is to be located shall have been accurately shown on an approved local plat and the boundaries must not have been significantly altered;
- (B) the lot(s) on which the proposed development is to be located shall have been suitable for the intended use according to the AEC guidelines in effect at the time the plat was approved; and
- (C) a minor development permit(s) must be applied for and received according to the normal minor permit process before development can begin.
- (b) The oceanfront setback provisions specifically applicable to large structures, as set forth by Rule .0306(a)(4) of this Subchapter, shall apply only to development applications received on or after November 1, 1983. Further, Rule .0306(a)(4) of this Subchapter shall only apply to the maximum extent possible without effectively prohibiting the intended use of the property in the following situations:
- (1) the completion of projects that had received valid CAMA permits prior to November 1, 1983, provided that permit renewals, modification and transfer requests for these projects made pursuant to 15A NCAC 7J .0404, .0405 and .0406 and 15A NCAC 7E .0105 shall be considered under the setback rules applicable at the time of original permit issuance, and no renewals or extensions of pre-existing permits shall be made beyond the expiration period unless either there has been substantial progress on construction or no material change in the physical conditions at the project site (as is provided by 15A NCAC 7J .0403); and
- (2) the completion of projects that were outside of CAMA permit jurisdiction prior to November 1, 1983, provided that all other required state and local permits had been applied for in accordance with the rules of the agencies responsible for such permits and that the developer has materially changed his or her position in good faith reliance on such development approvals. In all instances, such development must be consistent with all other provisions of this Subchapter.
- (c) In the case of subdivisions or projects which have received either all required final or preliminary local approvals or a CAMA major development permit prior to May 27, 1988, and have therein met all applicable CAMA setback requirements as of May 27, 1988, the updated oceanfront erosion rates approved by the Commission on July 29, 1988, and effective on November 1, 1988, shall only apply to the maximum extent feasible. For these previously approved lots and projects, the erosion rate existing as of May 27, 1988, shall be applied in determining minimum oceanfront setbacks for purposes of subsequent approved construction or development prior to the next erosion rate update.
- (d) In the case of subdivisions or projects which have received either all required final or preliminary local approvals or a CAMA major development permit since May 27, 1988 and prior to September 23, 1993 and have therein met all applicable CAMA setback requirements as of September 23, 1993 the updated oceanfront erosion rates approved by the Commission on January 28, 1994 and effective on April 1, 1994 shall only apply to the maximum extent feasible. For these previously approved lots and projects,

the erosion rate existing as of September 23, 1993 shall be applied in determining minimum oceanfront setbacks for purposes of subsequent approved construction or development prior to the next erosion rate update.

Statutory Authority G.S. 113A-107; 113A-113; 113A-124.

SECTION .0300 - OCEAN HAZARD AREAS

.0304 AECs WITHIN OCEAN HAZARD AREAS

The ocean hazard system of AECs contains all of the following areas:

- (1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The seaward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:
 - (a) a distance landward from the first line of stable natural vegetation to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates shall be those set forth in tables maps entitled "Long Term Annual Erosion Shoreline Change Rates updated through 1986 1992" and approved by the Coastal Resources Commission on July 29, 1988 January 28, 1994 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). The tables maps are available without cost from any local permit officer or the Division of Coastal Management; and
 - (b) a distance landward from the recession line established in Subparagraph (a) of this Paragraph Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equalled or exceeded in any given year.
- (2) The High Hazard Flood Area. This is the area subject to high velocity waters

(including, but not limited to, hurricane wave wash) in a storm having a one percent chance of being equalled or exceeded in any given year, as identified as zone VI-30 on the flood insurance rate maps of the Federal Insurance Administration, U.S. Department of Housing and Urban Development. In the absence of these rate maps, other available base flood elevation data prepared by a federal, state, or other source may be used, provided said data source is approved by the CRC.

- (3) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area shall extend landward from the mean low water line a distance sufficient to encompass that area within which the inlet will, based on statistical analysis, migrate, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet (such as an unusually narrow barrier island, an unusually long channel feeding the inlet, or an overwash area), and external influences such as jetties and channelization. These areas shall be identified on inlet hazard area maps approved by the Coastal Resources Commission. The areas identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, by Loie J. Priddy and Rick Carraway are hereby designated as Inlet Hazard Areas except that the Cape Fear Inlet Hazard as shown on said map shall not extend northeast of the Baldhead Island marina entrance channel. In all cases, this area shall be an extension of the adjacent ocean erodible area and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area.
- (4) Unvegetated Beach Area. This is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following detailed studies by the Coastal Resources Commission. These areas shall be desig-

nated on maps approved by the Commission and available without cost from any local permit officer or the Division of Coastal Management.

Statutory Authority G.S. 113A-107; 113A-113; 113A-124.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to adopt rules cited as 15A NCAC 10B .0123; 10H .0813 and amend rules cited as 15A NCAC 10B .0119; 10F .0330; 10H .0806; 10I .0002 - .0003.

The proposed effective date of this action is March 1, 1994.

The public hearing will be conducted at 10:00 a.m. on November 22, 1993 at the 3rd Floor Conference Room, Archdale Building, 512 North Salisbury Street, Raleigh, NC 27604-1188.

Reason for Proposed Action:

15A NCAC 10B .0119 - To restrict the collection of spotted turtles.

15A NCAC 10B .0123 - To prohibit possession of tongueless or African Clawed Frog.

15A NCAC 10F .0330 - To establish a no wake zone north of the Beaufort Drawbridge on the Newport River.

15A NCAC 10H .0806 - To require falconry permittees to report all acquisitions and dispositions of raptors to the U.S. Fish and Wildlife Service and to the Wildlife Resources Commission.

15A NCAC 10H .0813 - To establish permit requirements for raptor propagation permit.

15A NCAC 10I .0002 - To allow raptors listed as a special concern species to be taken from the wild pursuant to a permit and to allow captive-bred raptors listed as special concern species to be bought, sold or bartered.

15A NCAC 10I .0003 - To designate the Carolina Heelsplitter as an endangered species.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from November 1, 1993 to December 1, 1993. Such

written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

.0119 WILDLIFE COLLECTORS

(a) Collection Licenses. The Executive Director is authorized to license qualified individuals to take or collect any species of wildlife resources except that endangered, threatened, special concern species, spotted turtles (Clemmys guttata), Eastern diamondback rattlesnakes, Carolina pygmy rattlesnakes, and Eastern coral snakes may not be taken or collected except under a special permit issued by the Executive Director for research proposes. This Rule shall not prohibit an individual from killing an endangered, threatened, or special concern species, or an Eastern diamondback rattlesnake, Carolina pygmy rattlesnake, or Eastern coral snake in defense of his own life or the lives of others without a permit. Individuals who hold less than five reptiles or less than 25 amphibians not on the endangered, threatened or special concern lists and not including spotted turtles (Clemmys guttata), Eastern diamondback rattlesnakes, Carolina pygmy rattlesnakes, and Eastern coral snakes are exempted from this license requirement. Such license shall be issued upon payment of a fee in accordance with the General Statutes, except that licenses may be issued to representatives of educational or scientific institutions or of governmental agencies without charge. Such license may be used in lieu of any other hunting or trapping license required by law and shall authorize possession and transportation of the wildlife incidental to the authorized taking, except that it shall not authorize the taking, possession or transportation of any species of wildlife in violation of federal laws or regulations.

(b) Qualifications of Licensees. In addition to representatives of educational and scientific institutions and governmental agencies, the collection license may be issued to any individual for any worthwhile purpose when such is not deemed inimical to the efficient conservation of the species to be collected or to some other wildlife species that may be dependent thereon.

(c) Methods of Taking. The manner of taking wildlife resources under a collection license may be specified by the Executive Director and need not be restricted to the usual methods of hunting or trapping.

(d) Term of License. The Executive Director may, in his discretion, impose time limits and other restrictions on the duration of any collection license, but unless so restricted the license shall be valid from January 1 through December 31 of the applicable year.

(e) Report of Collecting Activity. Each individual licensed under this Rule shall submit a written report to the Executive Director within 15 days following the date of expiration of the license. The report shall be on a form supplied by the Wildlife Resources Commission and shall show the numbers of each species taken under the license and the use or disposition thereof. The Executive Director may require additional information for statistical purposes such as the dates and places of the taking and the sex, size, weight, condition, and approximate age of each specimen taken. Such additional information may be required on the form of report or by a separate writing accompanying the form.

(f) Other Requirements and Restrictions. The Executive Director may, in his discretion, impose such other requirements and restrictions on persons licensed under this Rule as he may deem to be necessary to the efficient administration of the wildlife conservation laws and regulations.

Statutory Authority G.S. 113-134; 113-272.4.

.0123 POSSESSION OF CERTAIN SPECIES OF WILDLIFE RESOURCES

It is unlawful to transport, purchase, possess, or sell any species of Tongueless or African Clawed Frog (*Xenopus spp.*) or to stock or release them in the public or private waters or lands of North Carolina, except that they may be possessed in indoor facilities of scientific and educational institutions by permit issued by the Executive Director pursuant to G.S. 113-274(c)(4) and containing such conditions and limitations as he deems necessary.

Statutory Authority G.S. 113-134; 113-274; 113-292.

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

.0330 CARTERET COUNTY

(a) Regulated Areas. This Rule applies to the following waters in Carteret County:

- (1) the waters of Money Island Slough beginning at the east end of Money Island near the Anchorage Marina Basin and ending at the west end of Money Island where Brooks Avenue deadends at the slough;
- (2) the waters of Taylor Creek located within the territorial limits of the Town of Beaufort;
- (3) the waters of Pelletier Creek beginning at the entrance to Pelletier Creek at the Intracoastal Waterway and ending at U.S. Highway 70;
- (4) the waters of Bogue Sound in Morehead City between Sugar Loaf Island and the seawall on the south side of Evans, Shepard and Shackleford Streets and bounded on the east by the State Ports Authority and on the west by the eastern right-of-way margin of South 13th Street extended;
- (5) the waters of Gallant's Channel from the US 70 crossing over the Grayden Paul bridge to Taylor's Creek;
- (6) the waters of Cedar Island Bay and Harbor from U.S. 70 to Cedar Island Bay Channel Light 8;
- (7) the waters of Radio Island Creek;
- (8) the waters of the Newport River beginning at the north side of the Beaufort Draw Bridge and ending at marker #6.

(b) Speed Limit. It is unlawful to operate a motorboat or vessel at a speed greater than no-wake speed while on the waters of the regulated areas designated in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Carteret County, with respect to the regulated areas designated in Subparagraphs (1), (3), (5), (6), (7) and (8) of Paragraph (a) of this Rule, and the Board of Commissioners of the Town of Beaufort, with respect to the regulated area designated in Subparagraph (2) of Paragraph (a) of this Rule, and the Board of Commissioners of Morehead City, with respect to Subparagraph (4) of Paragraph (a) of this Rule, are designated as suitable agencies for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the

United States Army Corps of Engineers.

Statutory Authority G.S. 75A-3; 75A-15.

SUBCHAPTER 10H - REGULATED ACTIVITIES

SECTION .0800 - FALCONRY

.0806 CONDITIONS OF PERMIT

Every falconry permit shall be issued subject to the following special conditions:

- (1) A permittee may not take, transport or possess a golden eagle (*Aquila chrysaetos*) unless authorized in writing by the U.S. Fish and Wildlife Service.
- (2) A permittee may trade or transfer a raptor to another permittee if the transaction occurs entirely within the state and no money or other consideration is involved. A permittee may trade or transfer a raptor to another permittee in an interstate transaction if the prior written approval of the Commission is obtained and no money or other consideration is involved in the transaction. A permittee must report all acquisitions and dispositions of raptors to the U.S. Fish and Wildlife Service and to the Commission on forms supplied by the Commission. A permittee may purchase, sell or barter any lawfully possessed raptor which is bred in captivity under a federal raptor propagation permit and banded with a numbered seamless marker provided by the U.S. Fish and Wildlife Service, provided:
 - (a) the person receiving such raptor is authorized to possess it under this Section, or 50 CFR 21, or the foreign country of his residence or domicile in accordance with 50 CFR 21.28(e)(2)(iii)(A); and
 - (b) ~~the~~ The permittee transferring such raptor has acquired it from a person authorized to possess it as provided by the Subparagraph (a) of this Paragraph Subitem (2)(a) of this Rule.
- (3) A permittee may not take, possess, or transport a raptor in violation of the restrictions, conditions, and requirements of the federal and state falconry regulations.
- (4) The falconry seasons and the daily, possession and season bag limits are con-

tained in 15A NCAC 10B .0216.

(5) A permittee must have his permit in possession at all times when raptor trapping devices or raptors are in his possession away from his residence.

(6) In addition to criminal penalties for violations provided by federal and state statutes, permits are subject to suspension or revocation in accordance with applicable law.

Authority G.S. 113-134; 113-270.3(b)(5); 50 C.F.R. 21.28; 50 C.F.R. 21.29.

.0813 RAPTOR PROPAGATION PERMIT

(a) Raptor propagation permits shall be obtained from the Commission and from the U.S. Fish and Wildlife Service prior to the captive breeding of any raptor.

(b) Permit requirements, application procedures, issuance criteria, and additional permit conditions for issuance of federal raptor propagation permits are set forth in 50 C.F.R. 21.30 which is hereby incorporated by reference and shall include any subsequent amendments.

(1) The state permit shall run concurrently with the federal permit and will expire on the same date as the federal permit. The state permit may be revoked or renewal may be denied for violation of the provisions of 50 C.F.R. 21.30.

(2) A copy of all applications and other records required under 50 C.F.R. 21.30 must be submitted to the Commission and to the U.S. Fish and Wildlife Service.

(c) Protected species of raptors listed as species of special concern in 15A NCAC 10I .0005, when lawfully acquired, may be propagated.

(d) Sale of captive-bred raptors and raptors taken from the wild is prohibited.

Authority G.S. 113-134; 113-270.3(b)(5); 50 C.F.R. 21.29.

SUBCHAPTER 10I - ENDANGERED AND THREATENED SPECIES

.0002 PROTECTION OF ENDANGERED/THREATENED/SPECIAL CONCERN SPECIES

(a) No Open Season. There shall be no open season for taking any of the species listed as endangered in Rule .0003, threatened in Rule .0004 or, unless otherwise provided, as special

concern in Rule .0005 of this Subchapter. Except as provided in Paragraphs (b), (c) and (e) of this Rule, it is unlawful to take or possess any of such species at any time.

(b) Permits. The executive director may issue permits to take an endangered, threatened, or special concern species for the purpose of scientific investigation relevant to perpetuation or restoration of said species or as a part of a commission-approved study or restoration effort.

(c) Taking Without a Permit:

- (1) An individual may take an endangered, threatened, or special concern species in defense of his own life or the lives of others without a permit.
- (2) A state or federal conservation officer or employee who is designated by his agency to do so may, when acting in the course of his official duties, take, possess, and transport endangered, threatened, or special concern species without a permit if the action is necessary to:
 - (A) aid a sick, injured, diseased or orphaned specimen;
 - (B) dispose of a dead specimen;
 - (C) salvage a dead specimen which may be useful for scientific study; or
 - (D) remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided the taking is done in a humane and noninjurious manner; the taking may involve injuring or killing endangered, threatened, or special concern species only if it is not reasonably possible to eliminate the threat by live-capturing and releasing the specimen unharmed, in a suitable habitat.

(d) Reporting. Any taking or possession of an endangered, threatened, or special concern species under Subsections (b) and (c) of this Rule is subject to applicable reporting requirements of federal law and regulations and the reporting requirements of the permit issued by the Executive Director or of 15A NCAC 10B .0106(e).

(e) Exception.

- (1) Notwithstanding any other provisions of this Rule, processed meat and other parts of American alligators, which have been lawfully taken in a state in which there is an open season for harvesting alligators, may be possessed, bought and sold when such products are marketed in packages or containers

which are distinctly labeled to indicate the state in which they were taken and the identity, location, and lawful authority of the processor or distributor.

(2) Raptors listed as special concern species in Rule .0005 of this Subchapter may be taken from the wild for falconry purposes and for falconry propagation, provided that a valid North Carolina endangered species permit has been obtained as required in Paragraph (b) of this Rule.

(3) Captive-bred raptors listed as special concern species may be bought, sold, bartered or traded as provided in 50 C.F.R. 21.30 when marked as required under those regulations.

Statutory Authority G.S. 113-134; 113-291.2; 113-291.3; 113-292; 113-333.

.0003 ENDANGERED SPECIES LISTED

(a) The following species of resident wildlife are designated as federally-listed endangered species:

- (1) Amphibians:
None Listed At This Time
- (2) Birds:
 - (A) American peregrine falcon (*Falco peregrinus anatum*);
 - (B) Bachman's warbler (*Vermivora bachmanii*);
 - (C) Bald eagle (*Haliaeetus leucocephalus*);
 - (D) Ivory-billed woodpecker (*Campephilus principalis*);
 - (E) Kirtland's warbler (*Dendroica kirtlandi*);
 - (F) Red-cockaded woodpecker (*Picoides borealis*);
 - (G) Roseate tern (*Sterna d. dougallii*);
 - (H) Wood stork (*Mycteria americana*).

- (3) Fish:
 - (A) Cape fear shiner (*Notropis mekistocholas*);
 - (B) Shortnose sturgeon (*Acipenser brevirostrum*), when found in inland fishing waters.

- (4) Mammals:
 - (A) Carolina northern flying squirrel (*Glaucomys sabrinus coloratus*);
 - (B) Eastern cougar (*Felis concolor couguar*);
 - (C) Gray bat (*Myotis grisescens*);
 - (D) Indiana bat (*Myotis sodalis*);
 - (E) Manatee (*Trichechus manatus*), when found in inland fishing

- waters;
- (F) Virginia big-eared bat (*Plecotus t. townsendii*).
- (5) Mollusks:
- (A) Carolina heelsplitter (*Lasmigona decorata*);
 - (B) (A) Dwarf wedge mussel (*Alasmidonta heterodon*);
 - (C) (B) Little-wing pearlymussel (*Pegias fabula*);
 - (D) (C) Tar river spiny mussel (*Elliptio [canthyria] steinstansana*).
- (6) Reptiles:
- (A) Atlantic ridley turtle (*Lepidochelys kempii*);
 - (B) Hawksbill turtle (*Eretmochelys imbricata*);
 - (C) Leatherback turtle (*Dermochelys coriacea*).
- (b) The following species of resident wildlife are designated as state-listed endangered species:
- (1) Amphibians:
Green salamander (*Aneides aeneus*).
 - (2) Birds:
Bewick's wren (*Thryomanes bewickii*);
 - (3) Fish:
 - (A) Blotchside Logperch (*Percina burtoni*);
 - (B) Cutlips Minnow (*Exoglossum maxillingua*);
 - (C) Dusky Darter (*Percina sciera*);
 - (D) Orangefin Madtom (*Noturus gilberti*);
 - (E) Paddlefish (*Polyodon spatula*);
 - (F) Rustyside Sucker (*Moxostoma hamiltoni*);
 - (G) Stonecat (*Noturus flavus*).
 - (4) Mammals:
None Listed At This Time
 - (5) Mollusks:
 - (A) Appalachian elktoe (*Alasmidonta raveneliana*);
 - (B) Barrel Floater (*Anodonta couperiana*);
 - (C) Carolina heelsplitter (*Lasmigona decorata*);
 - (D) (B) Fragile glyph (*Glyphyalinia clingmani*);
 - (E) (C) Green floater (*Lasmigona subviridis*);
 - (F) (D) Knotty elimia (*Goniobasis interrupta*);
 - (G) (E) Magnificent rams-horn (*Planorbella magnifica*);
 - (H) (F) Neuse spike (*Elliptio judithae*);
 - (I) (G) Pistolgrip (*Tritigonia verrucosa*);
 - (J) (H) Slippershell mussel (*Alasmidonta*

- viridis*);
- (J) (K) Tennessee hellsplitter (*Lasmigona holstonia*);
- (K) (L) Tennessee pigtoe (*Fusconaia barnesiana*).
- (6) Reptiles:
None Listed At This Time

Statutory Authority G.S. 113-134; 113-291.2; 113-292; 113-333.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10D .0002.

The proposed effective date of this action is May 1, 1994.

The public hearings will be conducted at 7:00 p.m. as follows:

District 9

January 24, 1994
Sylva, NC
Courthouse

District 8

January 25, 1994
Morganton, NC
Morganton Civic Center Auditorium

District 7

January 26, 1994
Elkin, NC
High School

District 6

February 1, 1994
Albemarle, NC
North Stanley High School

District 5

February 2, 1994
Graham, NC
Courthouse

District 4

February 3, 1994
Elizabethtown, NC
Courthouse

District 1

February 7, 1994

Edenton, NC

Swain Auditorium

District 2

February 8, 1994

New Bern, NC

Courthouse

District 3

February 9, 1994

Nashville, NC

Courthouse

Reason for Proposed Action: *To provide additional access on WRC-owned gameland for persons with disabilities.*

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from November 1, 1993 to February 9, 1994. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

Editor's Note: *This Rule was filed as a temporary amendment effective October 11, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

**CHAPTER 10 - WILDLIFE RESOURCES
AND WATER SAFETY**

**SUBCHAPTER 10D - GAME LANDS
REGULATIONS**

**.0002 GENERAL REGULATIONS
REGARDING USE**

(a) **Trespass.** Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner. Travel is restricted, except by authorized personnel, to direct access from SR 2074 to the established waterfowl viewing stands on Cowan's Ford Waterfowl Refuge. The Wildlife Resources Commission may designate areas on game lands as either an Archery Zone, Safety Zone or Restricted Zone.

(1) **Archery Zone.** On portions of game

lands posted as "Archery Zones" hunting is limited to bow and arrow hunting only.

(2) **Safety Zone.** On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land.

(3) **Restricted Zone.** Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission.

(4) **Establishment of Archery and Restricted Zones.** The Commission will conduct a public input meeting in the area where the game land is located before establishing any archery or restricted zone. After the input meeting the public comments will be presented to an official Commission meeting for final determination.

(b) **Littering.** No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) **Possession of Hunting Devices.** It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals, other than fox, thereon unless said device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season

without field trial authorization. This Rule shall not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shell containing larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a game land, except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl hunting. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

(d) Game Lands License

(1) Hunting and Trapping

(A) Requirement. Except as provided in Part (B) of this Subparagraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities must have in his possession a game lands license in addition to the appropriate hunting or trapping licenses.

(B) Exceptions

- (i) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
- (ii) The resident and nonresident sportsman's licenses include game lands use privileges.
- (iii) Judges and nonresidents participating in field trials under the circumstances set forth in Subsection (e) of this Rule may do so without the game lands license.
- (iv) On the game lands listed in Rule .0003(d)(1) of this Subchapter the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(2) Trout Fishing. Any person 16 years of age or over, including an individual fishing with natural bait in the county of his residence, entering a game land for the purpose of fishing in designated public mountain trout waters located thereon must have in his possession a

game lands license in addition to the regular fishing license and special trout license. The game lands license is not required to fish in that part of Slick Rock Creek which coincides with the Tennessee State line, or when fishing from boat on Calderwood Lake. The resident and nonresident sportsman's licenses and short-term comprehensive fishing licenses include trout fishing privileges on game lands.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident participating therein may do so without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence.

Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by a check for the facility use fee computed at the rate of fifty dollars (\$50.00) for each scheduled day of the trial. The total facility use fee will cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee must be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of twenty-five dollars (\$25.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the specific approval so obtained.

The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may

be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 must submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1.

Dogs may not be trained or permitted to run unleashed between April 1 and August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on that portion of the Butner-Falls of Neuse Game Lands marked as the Penny Bend Rabbit Research area;
- (6) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
- (7) on the Hunting Creek Swamp Waterfowl Refuge.

On those areas of state-owned land known collectively as the Roanoke River Wetlands and including the Broadneck, Company Swamp, Conine Island, Speller-Outlaw and Urquhart tracts, controlled trapping is allowed under a permit system. For information contact the Division of Wildlife Management of the Wildlife Resources

Commission.

(g) Use of Weapons. No person shall hunt or discharge a firearm or bow and arrow from a vehicle, or within 200 yards of any building or designated camping area, or within, into, or across a posted "safety zone" on any game land. No person shall hunt with or discharge a firearm within, into, or across a posted "restricted zone" on any game land.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed and maintained for vehicular travel and those trails posted for vehicular travel, unless such person: ; provided that this provision shall not apply to participants

- (1) is a participant in scheduled bird dog field trials held on the Sandhills Game Land; or
- (2) is a disabled license holder pursuant to G.S. 113-270.2 and G.S. 113-271 and the underlying basis for obtaining such license was limited physical mobility. Persons meeting this criteria may operate electric wheelchairs and All Terrain Vehicles on those game lands owned by the Wildlife Resources Commission. For purposes of this Rule, the term "wheelchair" is defined as a device that is designed solely to be used by mobility-impaired individuals for locomotion. The term "All Terrain Vehicle" is defined as those vehicles having three or four wheels, tire pressure of no more than five pounds per square inch and a gross vehicle weight of no more than 600 pounds. Notwithstanding this Rule, no person shall operate an electric wheelchair, an All Terrain Vehicle, or any other motorized vehicle on wildlife plantings, high risk areas of erosion, dedicated nature preserves, other areas in which no access is permitted or in streams except at ford crossings.

(i) Camping. No person shall camp on any game land except on an area designated by the landowner for camping.

(j) Swimming. Swimming is prohibited in the lakes located on the Sandhills Game Land.

Statutory Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR-Commission for Health Services intends to amend rule cited as 15A NCAC 13B .1601.

The proposed effective date of this action is April 1, 1994.

The public hearing will be conducted at 10:00 a.m. on November 16, 1993 at the Norton Board Room, 6th Floor, Cooper Memorial Health Building, 225 N. McDowell Street, Raleigh, NC.

Reason for Proposed Action: To comply with the Federal amendment of Part 258 and allow small Municipal Solid Waste Landfills (MSWLFs) a conditional exemption to Section .1600 requirements. The amendment will also allow all MSWLFs that close prior to October 9, 1993, an extended completion date of October 9, 1994 for installation of a cap system.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Brad Rutledge, Division of Solid Waste Management, Solid Waste Section, PO Box 27687, Raleigh, NC 27611-7687. All written comments must be received by December 1, 1993. Persons who wish to speak at the hearing should contact Mr. Rutledge at (919) 733-0692. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE

PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

Editor's Note: This Rule was filed as a temporary amendment effective October 9, 1993, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

SECTION .1600 - REQUIREMENTS FOR MUNICIPAL SOLID WASTE LANDFILL FACILITIES (MSWLFs)

.1601 PURPOSE, SCOPE, AND APPLICABILITY

(a) Purpose. The purpose of this Section is to regulate the siting, design, construction, operation, closure and post-closure of all municipal solid waste landfill facilities, MSWLFs.

(b) Scope. This Section describes the performance standards, application requirements, and permitting procedures for all municipal solid waste landfill facilities. The requirements of this Section are intended to:

- (1) Establish the State standards for MSWLFs to provide for effective disposal practices and protect the public health and environment.
- (2) Coordinate other State Rules applicable to landfills.
- (3) Facilitate the transition for existing landfill facilities which continue to operate MSWLF units.

(c) Applicability. Owners and operators of new and existing landfill facilities including a MSWLF unit(s) shall conform to the requirements of this Section as follows:

- (1) Municipal solid waste landfill units which did not receive solid waste after October 9, 1991 shall comply with the Solid Waste Permit, the Conditions of Permit, and Rule .0510.
- (2) MSWLF units that received solid waste after October 9, 1991 but stop receiving waste before October 9, 1993 shall comply with the Solid Waste Permit, the Conditions of Permit, and Rule

.0510. The cap system shall be installed ~~within six months of last receipt of wastes by October 9, 1994~~ and shall meet the criteria set forth in Subparagraph (c)(1) of Rule .1627 of this Section. Owners or operators of MSWLF units that fail to complete cover installation by this date will be subject to all of the requirements applicable to existing MSWLFs.

(3) Effective dates.

(A) All MSWLF units that receive waste on or after October 9, 1993, except those units that qualify for an exemption as specified in Part (c)(3)(B) of this Rule shall comply with the requirements of this Section.

(B) A MSWLF unit that meets the conditions in Subparts (i) through (vi) of this Rule is exempt from the requirements of Section .1600 other than Rule .1627. This exemption shall not be effective unless the amendment to the federal rule 40 CFR Part 258.1 (e)(1) and (2) extending the effective dates is published in the Federal Register as a final rule.

(i) The MSWLF unit disposed of 100 tons per day or less of solid waste between October 9, 1991 and October 9, 1992.

(ii) The MSWLF unit does not dispose of more than an average of 100 TPD of solid waste each month between October 9, 1993 and April 9, 1994.

(iii) The MSWLF unit is not on the National Priorities List (NPL) as found in Appendix B to 40 CFR Part 300, which is hereby incorporated by reference including any subsequent amendments and additions. Copies of this material are available for inspection and may be obtained at the Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, 401 Oberlin Road, Raleigh, N.C. at no cost.

(iv) The MSWLF unit owner and operator shall notify the Division by November 1, 1993, that they shall stop receiving waste at their

MSWLF unit before April 9, 1994. Notification to the Division shall include a statement of compliance with all conditions specified in Part (c)(3)(B) of this Rule.

(I) If the MSWLF unit is owned or operated by a unit of local government, notification shall be in the form of a Resolution adopted by the Governing Board.

(II) If the MSWLF unit is privately owned or operated, the notification shall be executed by the owner and operator or in the case of a corporation, by a corporate officer with legal authority to bind the corporation. All signatures shall be properly attested and notarized.

(v) Waste received at the MSWLF unit shall cease prior to April 9, 1994.

(vi) MSWLF units which meet all conditions of exemption required within Subparagraph (c)(3) of this Rule shall complete installation of the cap system in accordance with Subparagraph (c)(1) of Rule .1627 of this Section by October 9, 1994.

(4) MSWLF units failing to satisfy the requirements of this Section constitute open dumps, which are prohibited under Section 4005 of RCRA. Closure of open dumps that receive household waste shall meet the requirements of this Section.

(d) The owner or operator of a MSWLF facility shall comply with any other applicable Federal and State laws, rules, regulations, or other requirements.

Statutory Authority G.S. 130A-294.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Certified Public Accountant Examiners intends to adopt rules cited as 21 NCAC 8F .0112; &J .0011; 8K .0301; 8N .0101 - .0104, .0201 - .0213, .0301 -

.0307, .0401 - .0408, amend rules cited as 21 NCAC 8A .0105, .0301, .0307 - .0309, .0315; 8B .0202, .0502; 8F .0103, .0105, .0107, .0302, .0409; 8G .0401, .0406, .0409; 8H .0002, .0004; 8I .0001, .0004; 8J .0001, .0002, .0005, .0006, .0008, .0010; 8K .0104, .0105, .0201; 8M .0102, .0201, .0301, .0304 and repeal rules cited as 21 NCAC 8F .0501; 8G .0101 - .0103, .0106 - .0109, .0112 - .0114, .0201 - .0205, .0208 - .0213, .0301 - .0306, .0310 - .0312; 8H .0003.

The proposed effective date of this action is February 1, 1994.

The public hearing will be conducted at 10:00 a.m. on December 13, 1993 at the N.C. State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, NC 27605.

Reason for Proposed Action: To improve readability of professional ethics and exam rules. Petition by a CPA to make the rules genderless. N.C. General Assembly adopted on July 15, 1993, a new law effective October 1, 1993, providing for creation of Registered Limited Liability Partnerships and Limited Liability Companies through which CPAs could practice in this State.

Comment Procedures: Any person interested in these Rules may present oral comments relevant to the action proposed at the public rule-making hearing or deliver written comments to the Board office not later than December 13, 1993. Anyone planning to attend the hearing should notify the Board office by noon on December 1, 1993, whether they wish to speak on the proposal and whether they will speak in favor of the proposal or against it. Anyone speaking on the proposals will be limited to a total of 10 minutes.

Editor's Note: 21 NCAC 8K .0301 was filed as a temporary adoption effective October 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 8 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

SUBCHAPTER 8A - DEPARTMENTAL RULES

SECTION .0100 - ORGANIZATIONAL

RULES

.0105 PURPOSES AND RESPONSIBILITIES

- (a) The Board is an independent state agency, unlike the N.C. Association of CPAs. The agency is an occupational licensing board and is authorized by Chapter 93 of the N. C. General Statutes.
- (b) The Board has these primary responsibilities:
- (1) to protect the public;
 - (2) to grant CPA certificates to those who have met legal requirements including age, citizenship, education, experience, and good moral character;
 - (3) to register CPA firms;
 - (4) to annually renew the certificates of qualifying CPAs and registered CPA firms;
 - (5) to administer the semi-annual CPA Examination;
 - (6) to administer the CPE program and monitor compliance with the program;
 - (7) ~~to administer the SOR program and monitor compliance with the program;~~
 - (8) ~~(7)~~ to adopt rules of professional ethics and conduct to be observed by CPAs in this state;
 - (9) ~~(8)~~ to conduct administrative hearings in accordance with state statutes and Board rules; and
 - (10) ~~(9)~~ to administer other provisions of G.S. 93.

(c) The Board is composed of five persons who are CPAs and two persons who are not CPAs but who represent the public at large.

(d) In North Carolina anyone can practice public accountancy by paying a minimal privilege license fee. However, anyone not licensed by the Board is restricted to the title "accountant." Even though a person holds a CPA certificate issued by another state, and holds a position in such fields as industry, government, or education, that person must obtain a North Carolina certificate in order to use the CPA title while in this state, subject to the exemptions set forth in 21 NCAC 8H .0005.

Statutory Authority G.S. 93-12.

SECTION .0300 - DEFINITIONS

.0301 DEFINITIONS

- (a) The definitions set out in G.S. 93-1(a) shall apply when those defined terms are used in 21 NCAC 8.
- (b) In addition to the definitions set out in G.S. 93-1(a), the following definitions and other defini-

tions in this Section apply when these terms are used in 21 NCAC 8:

- (1) "Active," when used to refer to the status of a person, describes a person who possesses a North Carolina certificate of qualification and who has not otherwise been granted "Retired," "Inactive," or "Conditional" status;
- (2) "AICPA" means the American Institute of Certified Public Accountants;
- (3) "Applicant" means a person who has applied to take the CPA examination;
- (4) "Attest service" means providing:
 - (A) any audit,
 - (B) any review of a financial statement,
 - (C) any compilation of a financial statement when the CPA expects, or reasonably might expect, that a third party will use the compilation and the CPA does not disclose a lack of independence, and
 - (D) any examination of prospective financial information;
- (5) "Audit" means an examination of financial statements of a person by a CPA, conducted in accordance with generally accepted auditing standards, to determine whether, in the CPA's opinion, the statements conform with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting;
- (6) "Board" means the North Carolina State Board of Certified Public Accountant Examiners;
- (7) "Calendar year" means the 12 months beginning January 1 and ending December 31;
- (8) "Candidate" means a person whose application to take the CPA examination has been accepted and who may sit for the CPA examination;
- (9) "Client" means one who orally or in writing agrees with a person or firm holding out pursuant to 21 NCAC 8A .0308 to receive any services included in 21 NCAC 8A .0307;
- (10) "Commission" means compensation, except a referral fee, for recommending or referring any product or service to be supplied by another person;
- (11) (10) "Compilation of a financial statement" means presenting in the form of a financial statement information that is the representation of any other person

without the CPA's undertaking to express any assurance on the statement;

- (12) (11) "Conditional," when used to refer to the status of a person, describes a person who holds a North Carolina certificate of qualification under certain conditions as imposed by the Board, such as additional requirements for failure to complete the required CPE hours in a calendar year;
- (13) (12) "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service;
- (14) (13) "CPA" means certified public accountant;
- (15) (14) "CPE" means continuing professional education;
- (16) (15) "Disciplinary action" means revocation or suspension of, or refusal to grant, membership, or the imposition of a reprimand, probation, constructive comment, or any other penalty or condition;
- (17) (16) "Disclosed" means a written statement of the service to be rendered with the contingent fee to be charged and is dated and signed by the client;
- (18) (17) "Examination of prospective financial information" means an evaluation by a CPA of:
 - (A) a forecast or projection,
 - (B) the support underlying the assumptions in the forecast or projection,
 - (C) whether the presentation of the forecast or projection is in conformity with AICPA presentation guidelines, and
 - (D) whether the assumptions in the forecast or projection provide a reasonable basis for the forecast or projection;
- (19) (18) "FASB" means the Financial Accounting Standards Board;
- (20) (19) "Firm" means an individual proprietor, a partnership, a professional corporation, a professional limited liability company, or a registered limited liability partnership;
- (21) (20) "Forecast" means prospective financial statements that present, to the

- best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions it expects to exist and the course of action it expects to take;
- (22) (20) "GASB" means the Governmental Accounting Standards Board;
- (23) (21) "Inactive," when used to refer to the status of a person, describes one who has voluntarily surrendered a certificate of qualification and who does not use the title "certified public accountant" nor does ~~he~~ one allow anyone to refer to ~~him~~ them as a "certified public accountant," and neither ~~he~~ they nor anyone else refers to ~~him~~ them in any representation as described in 21 NCAC 8A .0308(b). Unrevoked inactive certificates shall be kept by the Board until change of status of the former certificate holder;
- (24) (22) "IRS" means the Internal Revenue Service;
- (25) (23) "License year" means the 12 months beginning July 1 and ending June 30;
- (26) (24) "Member of a firm" means ~~any CPA who has an ownership interest in a CPA firm including owners, partners, and shareholders; as that term is used in G.S. 93-4 means any individual other than an assistant authorized by G.S. 93-9 who renders or offers to render accountancy services through a registered CPA firm;~~
- (27) (25) "NASBA" means the National Association of State Boards of Accountancy;
- (28) (26) "NCACPA" means the North Carolina Association of Certified Public Accountants;
- (29) (27) "North Carolina office" means any office physically located in North Carolina;
- (30) (28) "Participating firm" means a firm participating in the SQR program. Does not include firms exempt by reason of 21 NCAC 8M .0102(a) or deemed in compliance pursuant to 21 NCAC 8M .0104;
- (31) (29) "Person" means any natural person, corporation, partnership, profes-
- sional limited liability company, registered limited liability partnership, unincorporated association, or other entity;
- (32) (30) "Projection" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, given one or more hypothetical assumptions, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions it expects would exist and the course of action it expects would be taken given such hypothetical assumptions;
- (33) (31) "Referral fee" means compensation for recommending or referring any service of a CPA to any person;
- (34) (32) "Retired," when used to refer to the status of a person, describes one possessing a North Carolina certificate of qualification who does not receive any earned compensation for current personal services in any job whatsoever; however, this does not preclude volunteer services for which the retired CPA receives no direct nor indirect compensation so long as the retired CPA does not sign any documents, related to such services, as a CPA. Limited exemptions may be granted in the discretion of the Board only in the following instances when the applicant verifies no intent to return to active status and either:
- (A) the applicant performs no personal services related to the field of accounting, or
- (B) the applicant is not providing accounting services, is 70 years of age or more, and agrees not to hold ~~himself~~ oneself out as a CPA or use the title in connection with any type of service provided to the public;
- (35) (33) "Revenue Department" means the North Carolina Department of Revenue;
- (36) (34) "Review" means to perform an inquiry and analytical procedures that permit a CPA to determine whether there is a reasonable basis for expressing limited assurance that there are no material modifications that should be made to financial statements in order for them to be in conformity

- with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting;
- (37) (35) "SQR Advisory Committee" means the State Quality Review Advisory Committee to the Board;
- (38) (36) "SQR Program" means the State Quality Review Program of the North Carolina State Board of Certified Public Accountant Examiners;
- (39) (37) "SQR Review team" means that team of CPAs which reviews a firm pursuant to the requirements of Subchapter 8M. A review team may be comprised of one or more members;
- (40) (38) "SQR Review team captain" means that member of a review team who is responsible for the review and supervises the other members of the team;
- (41) (39) "SQR Reviewer" means a member of a review team including the review team captain; and
- (42) (40) "Trade name" means a name used to designate a business enterprise.

Statutory Authority G.S. 93-1; 93-12(8c).

.0307 PRACTICE OF ACCOUNTANCY OR ACCOUNTING

- (a) A person is engaged in the "public practice of accountancy" who:
- (1) holds himself oneself out to the public as a certified public accountant or an accountant, and,
 - (2) in consideration of compensation received or to be received,
 - (3) offers to perform or does perform for other persons
 - (4) services which involve:
 - (A) preparing, auditing or verifying financial transactions, books, accounts, or records, or
 - (B) preparing, verifying or certifying financial, accounting and related statements intended for publication, including preparing tax returns, or
 - (C) rendering professional services or assistance in or about any and all matters of principle or detail relating to accounting procedure and systems, or
 - (D) recording, presenting or certifying and interpreting such service (including tax, consulting or management

advisory services) through statements and reports.

(b) Services, as described in Subparagraph (a)(4) of this Rule, may be performed on a full-time, part-time or temporary basis in the various accounting fields, including, but not limited to, public accounting, governmental or other not-for-profit accounting, industrial, commercial or financial accounting, taxation and tax-related matters or accounting education.

Statutory Authority G.S. 93-1; 93-12.

.0308 HOLDING OUT TO THE PUBLIC

(a) The phrase "holds himself out to the public as a certified public accountant," as used in defining "public practice of accountancy" in G.S. 93-1(a)(5) and in these Rules, means any representation that a person holds a certificate of qualification, if that representation is made in connection with an offer to perform or the performance of accountancy services for the public, regardless of whether that representation is made by the person, someone associated with him them, or someone serving as his their agent. Any such representation is presumed to invite the public to rely upon the professional skills implied by the certificate in connection with the professional services offered to be performed or performed by the person.

(b) For purposes of this Rule, a representation shall be deemed to include any oral or written communication indicating that the person holds a certificate, including without limitation the use of titles or legends on letterheads, reports, business cards, brochures, resumes, office signs, telephone directories or any other advertisements, news articles, publications, listings, tax return signatures, signatures on experience or character affidavits for exam or certificate applicants, displayed membership in CPA associations, displayed CPA licenses from this or any other state, and displayed certificates or licenses from other organizations which have the designation "CPA" or "Certified Public Accountant" by the licensee's name.

(c) Faculty members licensed by the Board are not considered to be in the public practice of accountancy when they use the title "certified public accountant" only for identification as faculty members in an educational institution, for purposes of functioning in the capacity as such faculty members.

(d) Authors licensed by the Board are not considered to be in the public practice of

accountancy when they use the title "certified public accountant" only for identification as authors of books, articles or other publications, provided that such publications do not offer the performance of services or the sale of products (other than books, articles or other publications) of any kind.

(e) Licensees are not considered to be in the public practice of accountancy when their licensure is published in licensee or society membership directories, or is included in the sale of mailing labels, or when licensure or membership status is confirmed.

(f) Use of the title in the form of a disclosure, when a licensee is required by law to disclose the fact of certification as a CPA, is not "holding out" for the purposes of this Rule.

Statutory Authority 93-1(a)(5); 93-12.

.0309 CONCENTRATION IN ACCOUNTING

(a) A concentration in accounting must include:

- (1) at least 24 semester hours, or the equivalent in quarter hours, of undergraduate accountancy courses;
- (2) at least 16 semester hours, or the equivalent in quarter hours, of graduate accounting courses that are open exclusively to graduate students; or
- (3) a combination of undergraduate and graduate courses which would be equivalent to Subparagraph (1) or (2).

(b) If an applicant has a concentration in accounting but does not possess a bachelor's degree, or does not expect to receive such a degree within 90 days after the last day of the CPA examination, then the applicant's concentration in accounting must include:

- (1) four courses in principles of accounting,
- (2) one course in cost accounting,
- (3) one course in auditing, and
- (4) one course in income tax.

(c) In recognition of differences in the level of graduate and undergraduate courses, one semester (or quarter) hour of graduate study in accounting will be considered the equivalent of one and one-half semester (or quarter) hours of undergraduate study in accounting.

(d) Up to four semester hours, or the equivalent in quarter hours, of graduate income tax courses completed in law schools may count toward the semester hour requirement of Paragraph (a) of this Rule.

(e) Where, in the Board's discretion, an

accounting course duplicates another course previously taken, only the semester (or quarter) hours of one of the courses will be counted in determining if the applicant has a concentration in accounting.

(f) Accounting courses include such courses as principles courses at the elementary, intermediate and advanced levels; managerial accounting; cost accounting; fund accounting; auditing; and taxation. There are many college courses offered that would be helpful in the practice of accountancy, but are not included in the definition of a concentration of accounting. Such courses include business finance, business law, business management, computer science, economics, and writing skills, accounting internships, and CPA exam review.

Statutory Authority 93-12(5).

.0315 NEW FIRM, ONGOING FIRM

(a) When the members of a firm elect to divide the firm such that two or more firms are created, one firm may be the ongoing firm and the other firms may be new firms, or all may be new firms. The ongoing firm, if any, is the firm the members of which represent more than 50 percent of the ownership of the predecessor firm prior to the division.

(b) When two or more firms merge, the resulting firm may be an ongoing firm (successor to one of the predecessor firms) or it may be a new firm. The resulting firm is an ongoing firm if any percentage of ownership greater than 50 percent of one of the predecessor firms end up owning a percentage of the resulting firm greater than 50 percent.

(c) For purposes of this Rule, "percentage of ownership" refers to the percentage of the firm owned aggregately by the group of firm members in question. Percentage of ownership is determined based upon the number of shares held by the group if the firm is incorporated a professional corporation or a professional limited liability company, or, if the firm is a partnership or a registered limited liability partnership, the percentage of capital owned by the group.

(d) A change in an entity's form (for example, incorporation of what was a partnership) does not create a new firm. A new firm is not created by the addition of a member(s) not acquiring a percentage of ownership greater than 50 percent. Neither is a new firm created by the loss of a member(s) by retirement or death, provided the remaining members have purchased or are

purchasing the retired or deceased members' ownership, regardless of whether the retired or deceased member(s) owned more than 50 percent of the firm.

Note: The following examples illustrate this Rule:

- (1) Firm A splits into B and C. While A was in existence, its members and the respective percentage of ownership of those members were: Smith, 30 percent; Jones, 30 percent; and Wesson, 40 percent. Smith and Jones form firm B and Wesson practices solo in firm C. Since Smith and Jones owned 60 percent of firm A, firm B will be the ongoing firm. Wesson's firm C is a new firm.
- (2) If all the partners in the previous example had gone their separate ways, all three firms would have been new firms.
- (3) The firm of Miller and Link merges with the firm of Thomas and Calaber. Each predecessor firm had two partners. It is agreed that Miller and Link will each own 26 percent of the resulting firm. Therefore, aggregately, they will own 52 percent of the resulting firm. The resulting firm is the successor firm to Miller and Link, and therefore an ongoing firm, because Miller and Link aggregately owned a percentage greater than 50 percent of their old firm (100 percent) and now aggregately own a percentage greater than 50 percent of the resulting firm (52 percent).
- (4) If three two partner firms merge and each new partner receives 1/6 of the ownership of the resulting firm, the resulting firm is a new firm, because, although each set of previous partners owned 100 percent of their old firm, no set of previous partners owns a percentage of the new firm greater than 50 percent.

Statutory Authority 93-1; 93-12(8c).

SUBCHAPTER 8B - RULE-MAKING PROCEDURES

SECTION .0200 - NOTICE

.0202 MAILING LIST

- (a) Any person or agency desiring to be placed

on the mailing list for the Board's rule-making notices issued pursuant to G.S. 150B-12 150B-21.2 may file a request in writing, furnishing his their or its name and mailing address to the Executive Director of the Board, at the address set forth in 21 NCAC 8A .0102.

(b) The request should state the subject areas within the authority of the agency for which notice is requested.

Statutory Authority 93-12; 150B-21.2.

SECTION .0500 - DECLARATORY RULINGS

.0502 CONTENTS OF REQUEST

All requests for a declaratory ruling must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule to which the petition relates;
- (3) concise statement of the manner in which the petitioner is aggrieved, as defined in G.S. 150B-2(6), or thinks that he one may be injured by the rule or statute and its application to him them; and
- (4) statement of whether an oral hearing is desired and if so the reasons for such an oral hearing.

Statutory Authority 93-12; 150B-4.

SUBCHAPTER 8F - REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANT EXAMINATION AND CERTIFICATE APPLICANTS

SECTION .0100 - GENERAL PROVISIONS

.0103 FILING OF EXAMINATION APPLICATIONS AND FEES

(a) All applications for CPA examinations must be filed with the Board, accompanied by a check for the amount of the examination fee and made payable to the "Board of CPA Examiners." The Board sets the fee for each examination at the amount that enables the Board to recover its costs in administering the examination. If a check fails to clear the bank, the application shall be deemed incomplete and returned.

(b) Completed applications shall be postmarked with proper postage not later than the last day of February for the spring examination, and not later than the last day of August for the fall examination, unless one of those dates falls on a

weekend or federal holiday, in which case the application must be postmarked or received in the Board office on the next business day. Only a U.S. Postal Service cancellation will be considered as the postmark.

(c) The initial application filed to take the examination must include supporting documentation demonstrating that all legal requirements have been met, such as:

- (1) minimum legal age;
- (2) United States citizenship;
- (3) ~~residence or domicile in North Carolina;~~
- (3) (4) education;
- (4) (5) experience, if required in order to qualify for the examination; and
- (5) (6) good moral character.

(d) Any person born outside the United States must furnish to the Board office evidence of citizenship; evidence of resident alien status; or

- (1) other bona fide evidence that the applicant is legally allowed to remain in the United States for the purposes of becoming a U.S. citizen, and or
- (2) a notarized affidavit of intention to become a U.S. citizen, or
- (3) evidence that the applicant is a citizen of a foreign jurisdiction which extends to citizens of this state like or similar privileges to be examined.

(e) Official transcripts (originals - not photocopies) signed by the college registrar and bearing the college seal are required to prove education and degree requirements. A letter from the college registrar of the school may be filed as documentation that the applicant has met the graduation requirements if the degree has not been awarded and/or posted to the transcript. However, no examination grades will be released until an official transcript is filed confirming the information supplied in the college registrar's letter. All applicants submitting transcripts from foreign schools for consideration of degree and/or of meeting accountancy course requirements must have had the transcript(s) evaluated by a Board-approved educational evaluation service. Applicants are responsible for determining that their transcripts contain all information required by these Rules.

(f) If experience is required to qualify for examination, affidavits must be prepared and signed by employers on forms supplied by the Board.

(g) In order to document good moral character as required by Subparagraph (c)(6) of this Rule,

three certificates of good moral character signed by persons not related by blood or marriage to the applicant shall accompany the application.

(h) All applications for re-examination must be accompanied by three new certificates of moral character. No additional statements and affidavits regarding experience and education will be required for applications for re-examination.

(i) An applicant shall include as part of any application for the CPA examination a statement of explanation and a certified copy of court records if the applicant has been convicted or found guilty of or pleaded nolo contendere to any felony, or to any other criminal offense of which an essential element is:

- (1) dishonesty, deceit, or fraud;
- (2) violation of a federal or state tax law; or
- (3) commission of any act or conduct discreditable to the accountancy profession in violation of the Rules of Professional Ethics and Conduct for Certified Public Accountants, unless such information has been furnished in a previous application filed with the Board.

(j) If an applicant has been denied any license by any state or federal agency, the applicant shall include as part of his their application for the CPA examination a statement explaining such denial. An applicant shall include a statement of explanation and a certified copy of applicable license records if the applicant has been registered with or licensed by a state or federal agency and has been disciplined by that agency.

(k) Two recent identical photographs must accompany the application for the CPA examination. These photographs should be taken within the last six months. The photographs should be of the applicant alone, 2 x 2 inches in size, with an image size from the bottom of the chin to the top of the head, including hair, of between 1 and 1-3/8 inches. Photographs must be clear, front view, full face, taken in normal street attire without a hat or dark glasses, and printed on thin paper with a plain light background. They must be capable of withstanding a mounting temperature of 225 degrees Fahrenheit (107 degrees Celsius). They may be in black and white or in color. Snapshots, most vending-machine prints, and magazine or full-length photographs are unacceptable. Photographs retouched so that the applicant's appearance is changed are unacceptable. Applicants shall write their names on the back of their photos.

(I) If an applicant's name has legally changed and is different from the name on any transcript or other document supplied to the Board, the applicant shall furnish copies of the documents legally authorizing the name change.

Statutory Authority 93-12(3); 93-12(4); 93-12(5).

.0105 CONDITIONING REQUIREMENTS

(a) The following provisions shall apply to all persons who are approved to take the examination prior to the examination scheduled for May 1994:

- (1) A candidate subject to examination in all sections who receives a grade of 75 or higher in each of the four sections of the examination shall have passed the examination.
- (2) A candidate who is subject to examination in all sections of the examination and who receives a grade of 75 or higher in two or more sections or the combined sections of accounting practice or who is not subject to examination in all sections of the examination and who receives a grade of 75 or higher in any remaining section, shall receive conditional credit for the sections in which he receives a grade of 75 or higher and shall not be subject to examination in those sections as long as the conditional credit remains unexpired.
- (3) A candidate receiving conditional credit as provided for under Subparagraph (2) of Paragraph (a) of this Rule shall retain credit for a period of not more than five succeeding examinations offered by the Board, at which time the conditional credit expires. For the period during which an applicant who was or is in active military service any time subsequent to receiving conditional credit, only those examinations for which that applicant has applied and has been approved shall be considered as succeeding examinations.

(b) Effective with the May 1994 examination:

- (1) A candidate who has been awarded conditional credit for the accounting practice section shall be awarded conditional credit for the proposed accounting and reporting section, pursuant to Subparagraph (2) of Paragraph (a) of this Rule, and shall retain such credit until he passes the

remaining sections or until the conditional status of such credit expires, whichever occurs first.

- (2) A candidate who has been awarded conditional credit for either the auditing or the business law (renamed business law and professional responsibilities) section, or both, pursuant to Subparagraph (2) of Paragraph (a) of this Rule, shall retain such credit until he passes the remaining sections or until the conditional status of such credit expires, whichever occurs first.
- (3) A candidate who has been awarded conditional credit for the accounting theory section, pursuant to Subparagraph (2) of Paragraph (a) of this Rule, shall be awarded conditional credit for the proposed financial accounting and reporting section and shall retain such credit until he passes the remaining sections or until the conditional status of such credit expires, whichever occurs first.

(c) The following provisions shall apply to all persons who are approved to take the examination beginning with the May 1994 examination:

- (1) In order to pass the examination, a candidate shall be required to pass all sections of the examination with a grade of 75 or higher.
- (2) A candidate who passes all sections of the examination in one sitting shall have passed the examination. A candidate who is subject to examination in all sections of the examination and who passes two or more, but not all sections of the examination, or who is not subject to examination in all sections of the examination and who passes any remaining section shall receive conditional credit for those sections that he has passed and shall not be subject to examination in those sections as long as the conditional credit remains unexpired, provided that the candidate:
- (A) had taken all sections of the examination to which he was subject to examination at that sitting; and
- (B) attained a minimum grade of 50 on each section not passed at that sitting.
- (3) A candidate receiving conditional credit as provided for under Paragraph (b) or Subparagraph (2) of Paragraph (c) of this Rule shall retain such conditional

~~eredit for a period of not more than the six succeeding examinations offered by the Board subsequent to the examination for which the conditional credit was given, at which time the conditional credit expires. For the period during which an applicant who was or is in active military service any time subsequent to receiving conditional credit, only those examinations for which that applicant has applied and has been approved shall be considered as succeeding examinations.~~

~~NOTE: Pursuant to 21 NCAC 8F .0103, an applicant must apply for each examination for which he sits. Therefore, the provisions of Paragraph (a) of this Rule will no longer apply to any applicant after the November 1993 examination. Beginning with the May 1994 examination, Paragraph (e) of this Rule will apply to all applicants, even those who were approved to sit for an examination prior to that time.~~

(a) Passing Grades. A candidate shall be required to pass all sections of the examination with a grade of 75 or higher.

(b) Conditional Credit. If a candidate does not pass all of the sections in one sitting, conditional credit can be retained for passed sections subject to the following:

- (1) No conditional credit can be retained until the candidate has first passed at least two sections in one sitting;
- (2) To receive conditional credit for any section the candidate must sit for and make a grade of at least 50 on all unpassed sections; and
- (3) The conditional credit is good through the six succeeding times the exam is offered by the Board.

(c) Military Service. A candidate who was or is in active military service after receiving conditional credit shall have only those exams for which they apply and are approved during active military service counted as succeeding examinations.

(d) Section Equivalency. For purposes of conditional credit, the following pre- and post-May 1994 exam sections are equivalent:

- (1) accounting practice equals accounting and reporting;
- (2) accounting theory equals financial accounting and reporting;
- (3) auditing equals auditing; and
- (4) business law equals business law and professional responsibilities.

Statutory Authority 93-12(3); 93-12(4); 93-12(5).

.0107 COMMUNICATION OF RESULTS OF CPA EXAMINATIONS

(a) The Board will communicate to each candidate in writing the result achieved in each of his their examinations. Numerical grades awarded to candidates will not be released to third parties except by written consent of the candidate.

(b) In no event will any information concerning answers of candidates be given to anyone other than the candidate.

(c) Examination grades shall be mailed on the uniform national release date agreed to with the NASBA and the AICPA. However, candidates may receive their grades personally at the offices of the Board on the release date by notifying the Executive Director in writing not later than five days prior to the release date.

(d) Information prepared by the Board's staff about the results of the examination and intended for public information shall be made available no earlier than the day after the uniform national release date.

Statutory Authority 93-12(2); 93-12(3).

.0112 CANDIDATE'S REQUEST TO SIT IN ANOTHER JURISDICTION

(a) The Board may allow a North Carolina candidate to proctor the exam in another jurisdiction, provided such request is not submitted for the purpose of avoiding the requirements of that jurisdiction.

(b) The proctoring request shall accompany the examination application and must be approved by the proctoring jurisdiction.

(c) The approval of the proctoring request shall be in the discretion of the Board.

Statutory Authority 93-12.

SECTION .0300 - EDUCATIONAL REQUIREMENTS FOR EXAMINATION

.0302 EDUCATION AND WORK EXPERIENCE REQUIRED PRIOR TO CPA EXAM

(a) Under G.S. 93-12(5) there are three ways an applicant for the CPA examination can demonstrate the possession of sufficient education to become a CPA:

- (1) the possession of a bachelor's degree in any subject, from a regionally accredited college or university, that

- either includes or is supplemented by a concentration in accounting as defined in 21 NCAC 8A .0309;
- (2) two years of college at a regionally accredited college or university plus two years of experience in the public practice of accountancy under the direct supervision of a CPA; and
- (3) compliance with the requirements set forth in 21 NCAC 8F .0304, which provides for special examinations in lieu of formal education.
- (b) Applicants who intend to demonstrate their possession of sufficient education to become a CPA by showing that they possess either a bachelor's degree or two years of college must submit official transcripts with their application to take the CPA examination. Official transcripts shall show the grades the applicant received on courses completed and shall also show degrees awarded. An official transcript bears the seal of the school and the signature of the registrar or other appropriate official.

(c) With regard to Paragraph (a)(1) of this Rule, the Board may approve an application to take the CPA examination prior to the receipt of a bachelor's degree, if:

- (1) the concentration in accounting which will be included in or supplement the bachelor's degree is already complete or is reasonably expected to be completed by the end of the school term within which the examination falls; and
- (2) an applicant reasonably expects to receive the bachelor's degree within 90 days after the last day of the examination.

However, if the applicant fails to receive the degree within the specified time, the CPA examination grades shall not be released and if the applicant wishes to retake the examination, he they must reapply.

(d) With regard to Paragraph (a)(2) of this Rule, the completion of two years in an accredited college or university or its equivalent means that the applicant has successfully completed, or reasonably expects to complete at the end of the school term within which the examination falls, at least 60 semester hours of course work, or the equivalent in quarter hours, in a school, college, or university accredited by a regional accrediting association. The 60 semester hours must include a concentration in accounting as defined in 21 NCAC 8A .0309. However, if the applicant fails

to complete the necessary semester hours by the end of the school term within which the examination falls, the examination grades shall not be released and if the applicant wishes to retake the examination, he they must reapply.

(e) With regard to Paragraph (a)(2) of this Rule, the provisions set forth in 21 NCAC 8F .0401 regarding work experience apply to these two years of experience.

(f) With regard to Paragraph (a)(3) of this Rule, the applicant must complete the work experience that is required by all candidates for certification, and set forth in 21 NCAC 8F .0401, prior to the date the applicant applies for the CPA examination.

Statutory Authority 93-12(3); 93-12(5).

SECTION .0400 - EXPERIENCE

.0409 SATISFACTION OF EXPERIENCE REQUIREMENT BY TEACHING

(a) Teaching Experience. The requirement of "five years experience teaching accounting," G.S. 93-12(5), means teaching accounting full-time for five years.

- (1) Full-time teaching as described by the rules of the educational institution where the applicant taught will be accepted by the Board to be full-time teaching. However, in no case will less than 12 semester hours, or the equivalent, be accepted by the Board as full-time teaching.
- (2) If the applicant has not taught accounting full-time for five years, credit will be allowed by the Board for teaching accounting less than full-time on a pro rata basis based upon the number of semester hours required for full-time teaching at the educational institution where the applicant taught. However, in no case can an applicant receive credit for a full-time teaching year for teaching done in less than one academic year or more credit than one full-time teaching year for teaching done within one calendar year.
- (3) Courses outside the field of accounting will not be counted toward full-time teaching. Such courses include, but are not limited to: business law, finance, computer applications, personnel management, economics and statistics. Of the five years of full-time teaching
- (4)

experience, teaching accounting principles (below intermediate accounting) cannot be counted toward the educational requirement for more than the equivalent of two full-time years. The remaining three full-time teaching years must be taught in at least two different areas of advanced accounting such as auditing, income tax, intermediate financial accounting or advanced managerial accounting, and the applicant must have taught at least nine semester hours, or the equivalent, in at least two of the different areas. The purpose of this Subparagraph is to render unacceptable as meaningful experience both the continuous teaching of the elementary accounting course and the continuous teaching of the advanced courses in only one area of accounting.

(b) Required Information. The applicant must submit with his their application a letter from each institution where he they taught, certified by the applicant's dean or department head at that institution. The letter must state:

- (1) the number of credit hours which the applicant taught each year;
- (2) the names and academic level of the courses taught; and
- (3) the number of hours set by the rules of the institution as full-time teaching for each relevant year.

(c) Burden of Proof. An applicant having taught in an accredited community college or technical institute has the burden of proving that the credits earned by students taking those courses which the applicant taught would transfer to a four-year accredited college or university.

Statutory Authority 93-12(5).

SECTION .0500 - APPLICATIONS FOR CERTIFICATES

.0501 RESIDENCY

The residency requirement in G.S. 93-12(5) must be met either immediately before filing an application to receive a certificate of qualification or immediately before filing an application to take the examination.

Statutory Authority 93-10; 93-12(5); 93-12(6); 93-12(7a).

SUBCHAPTER 8G – CONTINUING

PROFESSIONAL EDUCATION (CPE)

SECTION .0100 – GENERAL PROVISIONS

.0101 COMPLIANCE WITH BOARD RULES OF PROFESSIONAL ETHICS/CONDUCT

(a) The reliance of the public and the business community on sound financial reporting and advice on business affairs imposes on the accounting profession an obligation to maintain high standards of technical competence, morality and integrity. To this end, a CPA shall at all times maintain independence of thought and action, hold the affairs of his clients in strict confidence, strive continuously to improve his professional skills, observe generally accepted accounting principles and standards, promote sound and informative financial reporting, uphold the dignity and honor of the accounting profession, and maintain high standards of personal conduct.

(b) Acceptance of licensure as a CPA implies that the licensee has assumed an obligation to be diligent in the performance of professional services; to be fair and honest in relations with clients, fellow practitioners and the public; to exhibit a proper appreciation of his duties to the community and state; and to comply with these Rules. Anyone authorized to use the title "CPA" in dealing with the public must inform the public that they are licensed by this Board.

(c) The Rules of Professional Ethics and Conduct presuppose that disciplinary assessment of a CPA's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question. Moreover, the rules presuppose that both the decision to take disciplinary action and the severity of such action depend on all of these facts and circumstances, including the willfulness and seriousness of the violation, any extenuating factors, and any previous violations. In interpreting the rules, one should keep in mind that they cover a broad range of behavior; consequently, they do not specifically enumerate every possible unethical act.

(d) The Rules of Professional Ethics and Conduct apply to all services performed in the practice of public accountancy, including tax and management advisory services, except:

- (1) where the wording of a rule indicates otherwise;
- (2) when a CPA is practicing outside the state of North Carolina and not rendering services for North Carolina clients, and consequently, is not subject

- to discipline for departing from any of the rules stated herein, as long as his conduct is in accord with the statutes and rules of the state, district or territory of the United States in which he is practicing; or
- (3) when a CPA is practicing outside the United States and, consequently, is not subject to discipline for departing from any of the rules stated herein, as long as his conduct is in accord with the rules of the organized accounting profession in the country in which he is practicing. However, when a CPA is associated with financial statements in such a manner as to imply that he is acting as an independent public accountant and under circumstances that would entitle the reader to assume that United States practices were followed, he must comply with the requirements of rules in Section 8G .0200.
- (e) The violation of any of these Rules by any person associated with a CPA in the practice of public accountancy who is either under the CPA's supervision, or the CPA's partner or fellow shareholder, will be deemed to be a violation of the rule by the CPA unless the CPA exercised proper supervision, when required by these Rules, and neither knew nor had reason to know of the violation.
- (f) A CPA shall not permit others to carry out on his behalf, with or without compensation, acts which if carried out by the CPA would be a violation of these Rules.

(g) In the interpretation and enforcement of these Rules, the Board will give consideration, but not necessarily dispositive weight, to relevant interpretations, rulings and opinions issued by the boards of other jurisdictions and by appropriately authorized ethics committees of professional organizations.

Statutory Authority G.S. 55B-12; 93-12(9).

.0102 DISCREDITABLE CONDUCT

(a) A CPA shall not engage in conduct discreditable to the accountancy profession. Discreditable conduct includes acts of professional misconduct and acts that are false, misleading, dishonest or deceptive.

(b) Professional misconduct includes but is not limited to:

- (1) attempting to violate the Rules of Professional Ethics and Conduct in this

- Subchapter;
- (2) knowingly assisting or inducing another to violate or attempt to violate the rules, or doing so through the acts of another;
- (3) acts that reflect adversely on the CPA's honesty, integrity, trustworthiness, good moral character or fitness as a CPA in other respects;
- (4) stating or implying an ability to improperly influence a governmental agency or official;
- (5) failing to fully cooperate with the Board in connection with any inquiry it shall make, including failing to claim mail from the U.S. Postal Service and responding completely and promptly to all inquiries by the Board or its representatives;
- (6) discriminating in employment practices based on race, color, religion, sex, national origin or handicap;
- (7) failing to comply with any disciplinary order issued by the Board;
- (8) failing to perform services in accordance with the conditions, terms or prerequisites of a public communication, quotation, engagement agreement, or contract;
- (9) regarding an invitation for competitive bids on attest services, it shall be discreditable for a CPA or CPA firm to knowingly offer to perform said services below cost for the purposes of injuring or destroying competition; provided, it shall not be a violation to do so in order to meet competition. Nothing herein shall be construed to prohibit competitive bidding nor establishes a minimum price of any CPA services.
- (e) False, misleading, dishonest or deceptive acts include, but are not limited to:
- (1) using deceptive representations in connection with services performed;
- (2) asserting that services are of a particular standard when they are not;
- (3) disparaging the accounting services or business of another by false, misleading or deceptive representations of fact;
- (4) misrepresenting facts or failing to disclose relevant facts;
- (5) creating false or unjustified expectations of favorable results;
- (6) implying abilities not supported by

- (7) valid education, professional attainments or licensing recognition; or providing false or misleading information on the qualifying experience of an applicant for a certificate of qualification.

Statutory Authority G.S. 55B-12; 93-12(9).

.0103 DISCIPLINE BY FEDERAL AND STATE AGENCIES OR BOARDS

A CPA shall not act in a way that would cause him to be disciplined by federal or state agencies or boards.

Statutory Authority G.S. 55B-12; 93-12(9).

.0106 VIOLATION OF TAX LAWS

A CPA shall not knowingly violate any state or federal tax laws in handling his personal business affairs, the business affairs of a client or the business affairs of a company or corporation of which he is owner or part owner.

Statutory Authority G.S. 93-12(9).

.0107 INDEPENDENCE

(a) A CPA, or his firm, who is performing an engagement in which the CPA, or his firm, will issue a report on financial statements of any client (other than a report in which lack of independence is disclosed) must be independent with respect to the client in fact and appearance.

(b) Independence is impaired if, for example, during the period of the professional engagement, or at the time of issuing the report, the CPA or his firm:

- (1) had or was committed to acquire any direct or material indirect financial interest in the client;
- (2) was a trustee of any trust or executor or administrator of any estate that had or was committed to acquire any direct or material indirect financial interest in the client;
- (3) had any joint or closely held business investment with the client or any officer, director or principal stockholder thereof which was material in relation to the net worth of the client, the CPA or his firm; or
- (4) had any loan to or from the client or any officer, director or principal stockholder thereof other than loans of the following kinds made by a financial

institution under normal lending procedures, terms and requirements:

- (A) loans obtained by the CPA or his firm which are not material in relation to the net worth of the borrower;
- (B) home mortgages; and
- (C) other secured loans, except those secured solely by a guarantee of the CPA or his firm.

(e) Independence will also be considered to be impaired if, during the period covered by the financial statements, during the period of the professional engagement or at the time of issuing the report, the CPA:

- (1) was connected with the client as a promoter, underwriter, voting trustee, director, officer or in any capacity equivalent to that of a member of management or of an employee; or
- (2) was a trustee for any pension or profit sharing trust of the client.

(d) The examples in this Rule are not intended to be all-inclusive.

Statutory Authority G.S. 55B-12; 93-12(9).

.0108 INTEGRITY AND OBJECTIVITY

(a) A CPA shall not subordinate his judgment to others when engaged in the practice of public accounting, including the rendering of tax and management advisory services.

(b) In tax practice, he may resolve doubt in favor of his client as long as there is reasonable support for his position.

Statutory Authority G.S. 55B-12; 93-12(9).

.0109 COMPETENCE

A CPA shall comply with the following standards:

- (1) He shall undertake only those engagements which he or his firm can reasonably expect to complete with professional competence;
- (2) He shall exercise due professional care in the performance of an engagement;
- (3) He shall adequately plan and supervise an engagement; and
- (4) He shall obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to an engagement.

Statutory Authority G.S. 55B-12; 93-12(9).

.0112 DISCIPLINARY ACTIONS FOR VIOLATIONS

(a) Any person or firm having violated any accountancy statute or rule of this Board may be subjected for each such violation to any of the following disciplinary actions or a combination of such:

- (1) Unpublished Reprimand issued without prejudice to the rights of the CPA or firm to practice. It requires Board action and is premised upon the Board's assumption that a violation has occurred. The reprimand is kept in the CPA or firm file and may be considered as evidence bearing on the willfulness of any allegation of subsequent violations of the same rule or statute.
- (2) Conditional Unpublished Reprimand—same as unpublished reprimand, but is conditioned upon the CPA's or firm's agreement to meet certain additional requirements, such as extra CPE or third party review of work product for a particular period of time.
- (3) Censure issued upon determination by the Board that a violation has occurred. Censure is a judgment or resolution condemning a person for misconduct; specifically, it is an official expression of disapproval passed by the Board. The censure is published in the Board's newsletter and is announced to various governmental agencies, associations and others requesting to be advised of the Board's actions. Although the right to practice is not directly impaired, privileges in professional associations may be adversely affected.
- (4) Conditional Censure—same as censure but the right to continue to practice is conditioned upon compliance with additional requirements, such as extra CPE or third party review of work product for a particular period of time.
- (5) Civil penalty may be assessed in amounts of up to one thousand dollars (\$1,000) per violation, as determined by the Board. The amount of the civil penalty is based on the number and severity of the violations. Privileges in professional associations are usually not affected, nor is the right to use the CPA title affected. Civil penalties assessed are made public in the same

manner as a censure.

- (6) Suspension is a revocation for a specified period of time. A suspension is published in the Board's newsletter and is announced in the same manner as a censure. It may result in a suspension of privileges to practice before governmental agencies such as the IRS and the Revenue Department. Memberships in associations may be terminated along with the ability to participate in group insurance plans. Former CPAs may be reinstated after a specific period of time if the CPA has met any conditions imposed by the Board at the time of suspension.
- (7) Revocation is permanent unless a person whose certificate is revoked applies for and is granted a new certificate of qualification pursuant to 21 NCAC 8I .0004. A revocation is published and announced in the same manner as a censure or suspension. A revocation may result in suspension of privileges to practice before the IRS and the Revenue Department. Memberships in associations may be terminated along with the ability to participate in group insurance plans. A CPA employed by a professional corporation must terminate employment and sever all financial interests in the professional corporation.
- (8) Consent Agreement is a formal agreement signed by the Board and the CPA containing terms to which the two parties agree. A consent agreement is customarily entered into when the Board desires to impose, and the CPA wishes to receive, disciplinary action other than that specifically provided in the statutes or rules, and it is desirable to avoid a full hearing.
- (9) Probation—the Board may suspend a penalty and permit the CPA to continue to practice but place the CPA on probation for a specific period of time and under certain conditions. The suspension of the penalty will be removed if any condition is violated.

(b) The Board may publish or announce the disciplinary action against a CPA in such manner and for such period as it deems appropriate.

Statutory Authority G. S. 55B-12; 93-12(9).

**.0113 REPORTING CONVICTIONS,
JUDGMENTS AND DISCIPLINARY
ACTIONS**

(a) A CPA shall notify the Board within 30 days of any conviction or finding of guilt of, or pleading of nolo contendere to:

- (1) a felony; or
- (2) any crime an essential element of which is dishonesty, deceit, fraud, a violation of federal or state tax law, or a violation of the Rules of Professional Ethics and Conduct contained in this Subchapter.

(b) A CPA shall notify the Board within 30 days of any judgment or settlement in a civil suit, the basis of which is grounded upon an allegation of gross negligence, dishonesty, fraud, misrepresentation, incompetency, or violation of any federal or state tax law and which was brought against either the CPA or a firm by which the CPA was employed or of which the CPA was a member.

(c) A CPA shall notify the Board within 30 days of a suspension of, or discipline concerning, a professional license or certificate, including a license to practice law or to practice before any state or federal agency, such as the IRS.

Statutory Authority G.S. 55B-12; 93-12(9).

**.0114 COOPERATION WITH BOARD
INQUIRY**

A CPA shall fully cooperate with the Board in connection with any inquiry it shall make. Full cooperation includes fully responding in a timely manner to all inquiries of the Board or representative of the Board.

Statutory Authority G.S. 55B-12; 93-12(9).

**SECTION .0200 - RESPONSIBILITIES TO
CLIENTS AND COLLEAGUES**

.0201 AUDITING STANDARDS

(a) A CPA shall not render auditing services for a client unless he has complied with the applicable generally accepted auditing standards.

(b) The Statements on Auditing Standards issued by the AICPA are hereby adopted by reference, as provided by G.S. 150B 14(e), and shall be considered generally accepted auditing standards for the purposes of Paragraph (a) of this Rule.

(c) Departures from such statements must be justified by those who do not follow them.

(d) Copies of the Statements on Auditing

Standards may be inspected in the offices of the Board, as described in 21 NCAC 8A .0102. Copies may be obtained from the AICPA, 1211 Avenue of the Americas, New York, NY 10036 as part of the "AICPA Professional Standards." They are available at cost, which is approximately twenty-eight dollars (\$28.00) in paperback form or two hundred dollars (\$200.00) in looseleaf subscription form.

Statutory Authority G.S. 55B-12; 93-12(9).

.0202 ACCOUNTING PRINCIPLES

(a) A CPA shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such statements contain any departure from an accounting principle which has a material effect on the statements taken as a whole, unless he can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading.

(b) In such cases his report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

(c) The Statements of Financial Accounting Standards, together with those Accounting Research Bulletins and Accounting Principles Board Opinions which are not superseded by action of the FASB, are hereby adopted by reference, as provided by G.S. 150B 14(e), and shall be considered generally accepted accounting principles for the purposes of Paragraph (a) of this Rule.

(d) Copies of the Statements of Financial Accounting Standards may be inspected in the offices of the Board, as described in 21 NCAC 8A .0102. Copies may be obtained from the FASB, High Ridge Park, Post Office Box 3821, Stamford, CT 06905-0821 as part of the "FASB Accounting Standards." They are available at cost, which is approximately thirty-four dollars (\$34.00) in paperback form and two hundred seventy-two dollars (\$272.00) in looseleaf subscription form.

Statutory Authority G.S. 55B-12; 93-12(9).

.0203 FORECASTS

(a) A CPA shall not permit his name to be used in conjunction with any forecast of future transactions in a manner which may lead to the belief that he vouches for the achievability of the forecast.

(b) A CPA shall not render services associated with prospective financial statements unless he has complied with the standards for accountants' services on prospective financial information.

(c) The Statements on Standards for Accountants' Services on Prospective Financial Information issued by the AICPA are adopted by reference, as provided by G.S. 150B-14(e), and shall be considered as the approved standards for services on prospective financial information for the purposes of Paragraph (b) of this Rule.

(d) Departures from such statements must be justified by those who do not follow them.

(e) Copies of the Statements on Standards for Accountants' Services on Prospective Financial Information may be inspected in the offices of the Board as described in 21 NCAC 8A .0102. Copies may be obtained from the AICPA, 1211 Avenue of the Americas, New York, NY 10036 as part of the "AICPA Professional Standards." They are available at cost, which is approximately twenty eight dollars (\$28.00) in paperback form or two hundred dollars (\$200.00) in looseleaf subscription form.

Statutory Authority G.S. 55B-12; 93-12(9).

.0204 CONFIDENTIAL CLIENT INFORMATION

(a) A CPA shall not disclose any confidential information obtained in the course of a professional engagement except with the consent of the client.

(b) This Rule shall not be construed:

(1) to relieve a CPA of his obligation under the standards adopted by reference in this Section;

(2) to affect in any way his compliance with a validly issued subpoena or summons enforceable by order of a court; or

(3) to preclude him from responding to any inquiry made by the AICPA Ethics Division or Trial Board, by a duly constituted investigative or disciplinary body of a state CPA society, or under state statutes.

(e) It is not a violation of this Rule to disclose confidential client information necessary for the SQR process or for any quality review program.

Statutory Authority G.S. 55B-12; 93-12(8c); 93-12(9).

.0205 CONTINGENT FEES

(a) The offering or rendering of professional services for, or the receipt of, a disclosed contingent fee by a CPA is not prohibited except for engaging to render or rendering by a CPA for a contingent fee:

(1) of professional services for, or the receipt of such a fee from, any person for whom the CPA also performs attest services, during the period of the attest services engagement and the period covered by any historical financial statements involved in such attest services; and

(2) for the preparation of original or amended tax returns or claims for tax refunds.

(b) Fees are not regarded as being contingent if fixed by courts or other public authorities or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.

Statutory Authority G.S. 55B-12; 93-12(9).

.0208 ACCOUNTING AND REVIEW SERVICES STANDARDS

(a) A CPA shall not render accounting and review services for a client unless he has complied with standards for accounting and review services.

(b) The Statements on Standards for Accounting and Review Services issued by the AICPA are hereby adopted by reference, as provided by G.S. 150B-14(e), and shall be considered as the approved standards for accounting and review services for the purposes of Paragraph (a) of this Rule.

(c) Departures from such statements must be justified by those who do not follow them.

(d) Copies of the Statements on Standards for Accounting and Review Services may be inspected in the offices of the Board, as described in 21 NCAC 8A .0102. Copies may be obtained from the AICPA, 1211 Avenue of the Americas, New York, NY 10036 as part of the "AICPA Professional Standards." They are available at cost, which is approximately twenty eight dollars (\$28.00) in paperback form or two hundred dollars (\$200.00) in looseleaf subscription form.

Statutory Authority G.S. 55B-12; 93-12(9).

.0209 MANAGEMENT ADVISORY SERVICES STANDARDS

(a) A CPA shall not render management advisory services for a client unless he has

complied with standards for management advisory services.

(b) The Statements on Standards for Management Advisory Services issued by the AICPA are hereby adopted by reference, as provided by G.S. 150B 14(e), and shall be considered as the approved standards for management advisory services for the purposes of Paragraph (a) of this Rule.

(c) Departures from such statements must be justified by those who do not follow them.

(d) Copies of the Statements on Standards for Management Advisory Services may be inspected in the offices of the Board, as described in 21 NCAC 8A .0102. Copies may be obtained from the AICPA, 1211 Avenue of the Americas, New York, NY 10036 as part of the "AICPA Professional Standards." They are available at cost, which is approximately ten dollars (\$10.00) in paperback form or two hundred dollars (\$200.00) in looseleaf subscription form.

Statutory Authority G.S. 55B-12; 93-12(9).

.0210 RESPONSIBILITIES IN TAX PRACTICE

(a) A CPA shall not render services in the area of taxation for a client unless he has complied with standards for tax services.

(b) The Statements on Responsibilities in Tax Practice issued by the AICPA are hereby adopted by reference, as provided by G.S. 150B 14(e), and shall be considered as the approved standards for tax services for the purposes of Paragraph (a) of this Rule.

(c) Departures from such statements must be justified by those who do not follow them.

(d) Copies of the Statements on Responsibilities in Tax Practice may be inspected in the offices of the Board, as described in 21 NCAC 8A .0102. Copies may be obtained from the AICPA, 1211 Avenue of the Americas, New York, NY 10036 as part of the "AICPA Professional Standards." They are available at cost, which is approximately twenty eight dollars (\$28.00) in paperback form or two hundred dollars (\$200.00) in looseleaf subscription form.

Statutory Authority G.S. 55B-12; 93-12(9).

.0211 GOVERNMENTAL ACCOUNTING STANDARDS

(a) A CPA shall not permit his name to be associated with governmental financial statements for a client unless he has complied with standards

for governmental accounting.

(b) The Statements on Governmental Accounting and Financial Reporting Standards issued by the GASB are hereby adopted by reference, as provided by G.S. 150B 14(e), and shall be considered as the approved standards for governmental accounting for the purposes of Paragraph (a) of this Rule.

(c) Departures from such statements must be justified by those who do not follow them.

(d) Copies of the Statements on Governmental Accounting and Financial Reporting Standards, including technical bulletins and interpretations, may be inspected in the offices of the Board, as described in 21 NCAC 8A .0102. Copies may be obtained from the GASB, Post Office Box 9125, Dept. 285, Stamford, CT 06925. They are available at cost, which is approximately forty seven dollars and fifty cents (\$47.50). In addition to the basic set, an updating subscription service is available for approximately forty four dollars (\$44.00) annually.

Statutory Authority G.S. 55B-12; 93-12(9).

.0212 ATTESTATION STANDARDS

(a) A CPA shall not render attestation services for a client unless he has complied with the applicable attestation standards.

(b) The Statements on Standards for Attestation Engagements issued by the AICPA are hereby adopted by reference, as provided by G.S. 150B 14(e), and shall be considered attestation standards for the purposes of Paragraph (a) of this Rule.

(c) Departures from such statements must be justified by those who do not follow them.

(d) Copies of the Statements on Standards for Attestation Engagements may be inspected in the offices of the Board, as described in 21 NCAC 8A .0102. Copies may be obtained from the AICPA, 1211 Avenue of the Americas, New York, NY 10036, as part of the "AICPA Professional Standards." They are available at cost, which is approximately thirty dollars (\$30.00) in paperback form or two hundred dollars (\$200.00) in looseleaf subscription form.

Statutory Authority G.S. 55B-12; 93-12(9).

.0213 RETENTION OF CLIENT RECORDS

(a) A CPA must return client records in his possession to the client after a demand is made for their return. The records must be returned immediately upon demand unless circumstances

make some delay reasonable in order to retrieve a closed file or to extract the CPA's work papers described in Paragraph (e) of this Rule. If the records cannot be returned immediately upon demand, the CPA will immediately notify the client of the date the records will be returned. Nothing in this Rule shall be interpreted to require a CPA to pay delivery costs when the records are returned to the client.

(b) If a CPA is engaged to perform certain work for a client, the CPA is only required to return or furnish copies of those records originally given to the CPA by the client if one of the following occurs:

- (1) the engagement is terminated prior to the completion of such work, or
- (2) the CPA's work product has neither been received nor paid for by the client.

(c) A CPA shall not retain a client's records in order to forece payment of any kind.

(d) Work papers are usually the CPA's property and need not be surrendered to the client. However, in some instances work papers will contain data which should properly be reflected in the client's books and records but for convenience have not been duplicated therein with the result that the client's records are incomplete. In such instances, the portion of the work papers containing such data constitutes part of the client's records, and copies should be given to the client along with the rest of the client's records. Work papers considered part of the client's records include but are not limited to:

- (1) Worksheets in lieu of original entry (e.g., listings and distributions of cash receipts or cash disbursements on columnar work paper);
 - (2) Worksheets in lieu of general ledger or subsidiary ledgers, such as accounts receivable, job cost and equipment ledgers, or similar types of depreciation records;
 - (3) All adjusting and closing journal entries and supporting details not fully set forth in the journal entry; and
 - (4) Consolidating or combining journal entries and worksheets and supporting detail used in arriving at final figures incorporated in an end product such as financial statements or tax returns.
- (e) Work papers developed by the CPA incident to the performance of an engagement which do not result in changes to the client's records, or are not in themselves part of the records ordinarily

maintained by such clients, are considered to be solely the CPA's work papers and are not the property of the client. For example, the CPA may make extensive analyses of inventory or other accounts as part of his selective audit procedures. These analyses are considered to be a part of the CPA's work papers, even if the analyses have been prepared by client personnel at the request of the CPA. Only to the extent these analyses result in changes to the client's records would the CPA be required to furnish the details from his work papers in support of the journal entries recording the changes, unless the journal entries themselves contain all necessary details.

(f) Nothing in this Rule shall be construed to require the CPA to furnish a client with copies of the client's records already in the client's possession. However, if the client asserts that such records have been lost, or are otherwise not in the client's possession, the CPA shall furnish copies of the records within a reasonable time for a fee.

Statutory Authority G.S. 55B-12; 93-12(9).

SECTION .0300 - OTHER RESPONSIBILITIES

.0301 ADVERTISING OR OTHER FORMS OF SOLICITATION

(a) A CPA shall not seek to obtain clients by advertising or using other forms of solicitation in a manner that is false, misleading or deceptive.

(b) CPAs residing in North Carolina may advertise the nature of services provided to clients. However, the CPA may not advertise or indicate a specialty designation or other title unless the CPA has met the requirements of the granting organization for the separate title or specialty designation and the title or specialty has been recognized by the Board. A list of specialties and titles and recognized sponsoring organizations shall be regularly published in the Board's newsletter.

Statutory Authority G.S. 55B-12; 93-12(9).

.0302 COMMISSIONS

A CPA shall not pay a commission to obtain a client, nor shall he accept a commission for a referral to a client, of products or services of others. This Rule shall not prohibit payments for the purchase of an accounting practice or retirement payments to individuals formerly engaged in the practice of public accounting or payments to their heirs or estates.

Statutory Authority G.S. 55B-12; 93-12(9).

.0303 INCOMPATIBLE OCCUPATIONS

A CPA shall not concurrently engage in any business or occupation which would create a conflict of interest in rendering professional services.

Statutory Authority G.S. 55B-12; 93-12(9).

.0304 QUALIFICATION OF PARTNERS

A CPA shall not engage in the public practice of accountancy with a partner who is anyone other than the holder of an unrevoked and currently valid CPA certificate.

Statutory Authority G.S. 55B-12; 93-12(9).

.0305 NAME OR STYLE OF A PRACTICE

(a) A firm engaged in the public practice of accounting may not use any false or misleading name, title, or reference in its name or associated with its name.

(b) It is considered misleading if a firm practices under a name or style which would tend to imply the existence of a partnership or a professional corporation of more than one shareholder or an association when in fact there is no partnership nor is there more than one shareholder in the firm. For example, no firm having just one owner may have as a part of its name the words "associates" or "company" or their abbreviations.

Statutory Authority G.S. 55B-5; 93-12(9).

.0306 FIRM NAME OR STYLE OF A PRACTICE

Use by a CPA practicing public accountancy by himself of any name other than his own name, or use by a partnership, a professional corporation or a professional association engaged in the practice of public accountancy of any name other than the names of one or more of its current or former partners or shareholders, must be approved in advance by the Board.

Statutory Authority G.S. 55B-5; 93-12(9).

.0310 PRACTICE THROUGH A NON-COMPLYING FIRM PROHIBITED

(a) A CPA shall not engage in the public practice of accountancy through a firm which is in violation of the registration requirements of 21 NCAC 8J .0008, 8J .0010 or the SQR

requirements of 21 NCAC 8M .0102.

(b) If a firm fails to comply with any part of 21 NCAC 8J .0008, 8J .0010 or 8M .0102, the Board may take disciplinary action against the firm's members. Such discipline may include:

- (1) a conditional license upon such conditions as the Board may deem appropriate for non-compliance of less than 60 days;
- (2) a conditional license and one hundred dollars (\$100.00) civil penalty for non-compliance in excess of 60 days but not more than 120 days;
- (3) a suspension of each member's CPA certificate for a period of not less than 30 days for non-compliance in excess of 120 days.

Statutory Authority G.S. 55B-12; 93-12(8c); 93-12(9).

.0311 FALSIFICATION IN CONNECTION WITH QUALITY REVIEW PROGRAMS

A CPA shall not falsify a review, report, or any required program or checklist of any quality review program.

Statutory Authority G.S. 93-12(9).

.0312 QUALITY REVIEW STANDARDS

A CPA who is engaged to perform a quality review shall not violate the rules or standards of the quality review program under which the review is made or the engagement contract connected with that quality review.

Statutory Authority G.S. 93-12(8c); 93-12(9).

SECTION .0400 - CPE REQUIREMENTS

.0401 CPE REQUIREMENTS FOR CPAS

(a) In order for a CPA to receive CPE credit for a course:

- (1) the CPA must attend or complete the course;
- (2) the course must meet the requirements set out in 21 NCAC 8G .0404(a) or (d); and
- (3) the course must increase the professional competency of the CPA.

(b) The Board approves sponsors of CPE courses and not particular courses. A CPE course provided by an approved sponsor is presumed to meet the CPE requirements set forth in 21 NCAC

8G .0404(a) if the sponsor has indicated that the course meets those requirements. However, it is up to the CPA attending the course and desiring to claim CPE credit for it to assess whether it increases his their professional competency.

(c) A course that increases the professional competency of a CPA is a course in an area of accounting in which the CPA practices or is planning to practice in the near future, or in the area of professional ethics or an area related to the profession, and is taught at a level which challenges the CPA.

(d) Because of differences in the education and experience of CPAs, a course may contribute to the professional competence of one CPA but not another. Each CPA must therefore exercise judgment in selecting courses for which CPE credit is claimed and choose only those that contribute to that CPA's professional competence.

(e) Active CPAs must complete 40 CPE hours, computed in accordance with 21 NCAC 8G .0409 by December 31 of each year, except as follows:

- (1) CPAs having certificate applications approved by the Board in April-June must complete 30 CPE hours during the same calendar year.
- (2) CPAs having certificate applications approved by the Board in July-September must complete 20 CPE hours during the same calendar year.
- (3) CPAs having certificate applications approved by the Board in October-December must complete 10 CPE hours during the same calendar year.

(f) There are no CPE requirements for retired or inactive CPAs.

(g) Any CPE hours completed during the calendar year in which the certificate is approved may be used for that year's requirement even if the hours were completed before the certificate was granted. When a CPA has completed more than the required number of hours of CPE in any one calendar year, the extra hours, not in excess of 20 hours, may be carried forward and treated as hours earned in the following year.

(h) Any CPE hours used to satisfy the requirements for change of status as set forth in 21 NCAC 8J .0005(b) or (c), for reinstatement as set forth in 21 NCAC 8J .0006, or for application for a new certificate as set forth in 21 NCAC 8I .0004 may also be used to satisfy the annual CPE requirement set forth in Paragraph (e) of this Rule.

(i) It is the CPA's responsibility to maintain records substantiating the CPE credits claimed for

the current year and for each of the four calendar years prior to the current year.

Statutory Authority G.S. 93-12(8b).

.0406 COMPLIANCE WITH CPE REQUIREMENTS

(a) All active CPAs must file with the Board a completed CPE reporting form by the July 1 renewal date of each year. ~~Inactive CPAs must file with the Board an affidavit of exemption from the CPE requirement by the July 1 renewal date.~~

(b) If a CPA fails to complete the CPE requirements prior to the end of the previous calendar year but the CPA has completed them by the July 1 renewal date, the Board may, in its discretion:

- (1) change the CPA's status from active to conditional, and may impose any conditions that the Board considers appropriate in the circumstances, as a penalty for the first such failure within a five calendar year period;
- (2) place the CPA on conditional status again and require the payment of a civil penalty of one hundred dollars (\$100.00) for the second such failure within a five calendar year period; and
- (3) deny the renewal of the CPA's certificate for a period of not less than 30 days and until the CPA meets the reinstatement requirements set forth in 21 NCAC 8J .0006 for the third such failure within a five calendar year period.

Statutory Authority G.S. 93-12(8b); 93-12(9e).

.0409 COMPUTATION OF CPE CREDITS

(a) Group Courses: Non-College. CPE credit for a group course that is not part of a college curriculum is given based on contact hours. A contact hour is 50 minutes of instruction. Credit is granted only for full contact hours. For example, a group course lasting 100 minutes is two contact hours and thus two CPE credits, and a group course lasting between 50 and 100 minutes is only one contact hour and thus only one CPE credit. When individual segments of a group course are less than 50 minutes, the sum of the individual segments is added to determine the number of contact hours. For example, five 30-minute presentations are 150 minutes, which is three contact hours and three CPE credits. No credit shall be allowed for a segment unless the

participant completes the entire segment.

(b) Completing a College Course. CPE credit for completing a college course in the college curriculum will be granted based on the number of credit hours the college gives the CPA for completing the course. One semester hour of college credit is 15 CPE credits; one quarter hour of college credit is ten CPE credits; and one continuing education unit (CEU) is ten CPE credits. If a college course does not carry credit, CPE credit for the course will be based on the number of contact hours of the course using the formula set out in Paragraph (a) of this Rule. However, under no circumstances will CPE credit be given to a CPA who audits a college course.

(c) Self Study. CPE credit for a self-study course is given based on the average number of contact hours needed to complete the course. One-half of the average completion time is allowed for CPE credit. A sponsor must determine, on the basis of pre-tests, the average number of contact hours it takes to complete a course.

(d) Instructing a CPE Course. CPE credit for teaching or presenting a CPE course is given based on the number of contact hours spent in preparing and presenting the course. No more than 50 percent of the CPE credits required for a year may be credits for preparing for and presenting a course. CPE credit for preparing for and presenting a course is allowed only once a year for a course presented more than once in the same year by the same CPA.

(e) Authoring a Publication. CPE credit for published articles and books is given based on the number of contact hours the CPA spent writing the article or book. Generally, no more than 25 percent of a CPA's required CPE credits for a year may be credits for published articles or books. However, upon written request by the CPA, the Board may award more CPE credits for the article or book.

(f) Instructing a College Course. CPE credit for instructing a graduate level college course is given based on the number of credit hours the college gives a student for successfully completing the course, using the calculation set forth in Paragraph (b) of this Rule. Credit will not be given for instructing an undergraduate level course. In addition, no more than 50 percent of the CPE credits required for a year may be credits for instructing a college course and, if CPE credit is also claimed under Paragraph (d) of this Rule, no more than 50 percent of the CPE credits required for a year may be credits claimed under Paragraph (d) and this Paragraph. CPE credit for instructing

a college course is allowed only once for a course presented more than once in the same year by the same CPA.

(g) Interactive Self-Study. CPE credit for interactive self-study is based on a program designed to use interactive learning methodologies that simulate a classroom learning process by employing computer software, other course material, or administrative systems that provide significant ongoing, interactive feedback to the learner regarding their learning progress. The sponsor must determine the CPE credit to be allowed based on the average number of contact hours needed to complete the course.

Statutory Authority G.S. 93-12(8b).

SUBCHAPTER 8H - RECIPROCITY

.0002 TEMPORARY PERMIT

(a) The Board may grant temporary permits only to applicants for reciprocal certificates pending their qualification under 21 NCAC 8H .0001.

(b) ~~This temporary permit will designate the holder as a CPA in good standing in the state issuing the CPA's certificate. An out-of-state CPA who does not have a certificate from this Board but desires to use the CPA title within this state must first:~~

- (1) apply to the Board for a temporary permit and reciprocal certificate on forms provided by the Board;
- (2) furnish the Board with an affidavit signed by an official of the CPA licensing board of a state in which the CPA is currently licensed to practice public accounting, showing both the certificate number and that the applicant is in good standing; and
- (3) furnish the Board with evidence of the applicant's CPA examination grades through an affidavit signed by an official of a CPA licensing board which can verify the grades;

(c) ~~An applicant for a temporary permit must pay a nonrefundable fee of twenty five dollars (\$25.00), which is applied to the fee for a reciprocal certificate. Upon approval of a temporary permit, the Board will issue the applicant a statement confirming that the CPA is in good standing in the state issuing the CPA's certificate and is entitled temporarily to use the CPA title and engage in the public practice of accountancy in North Carolina for a stated period. The stated period shall expire 120 days after issue~~

or upon issuance of the individual's reciprocal certificate, whichever comes first.

Statutory Authority G.S. 93-12(6); 93-12(7a).

.0003 APPLICATION FOR TEMPORARY PERMIT

- (a) An out of state CPA who does not have a certificate from this Board but desires to use the CPA title within this state must first:
- (1) apply to the Board for a temporary permit on a form provided by the Board;
 - (2) furnish the Board with an affidavit signed by an official of the CPA licensing board of a state in which the CPA is currently licensed, showing both the certificate number and that the applicant is in good standing;
 - (3) furnish the Board with evidence of his CPA examination grades through an affidavit signed by an official of a CPA licensing board which can verify the grades;
 - (4) furnish the Board with a statement that all work on the engagements will be done by or under the direct supervision of a CPA certified by this Board or holding a temporary permit from this Board; and
 - (5) pay an initial application fee for the first temporary permit or a renewal fee for each subsequent application for a temporary permit.
- (b) The initial application fee and the renewal fee for temporary permits shall be the maximum amount allowed by statute for each license year or fraction thereof.
- (c) Upon approval of a temporary permit, the Board will issue the applicant a statement confirming that the CPA is entitled temporarily to use the CPA title and engage in the public practice of accountancy in North Carolina for a stated license year or fraction thereof.

Statutory Authority G.S. 93-10; 93-12(6); 93-12(7a); 93-12(8).

.0004 NOTICE TO BOARD OF DISCIPLINE BY OTHER AGENCY

Any applicant for or holder of a temporary permit or reciprocal certificate issued by this Board shall also comply with the reporting requirements listed in 21 NCAC 8G-.0113 8N .0208.

Statutory Authority G.S. 93-12(3).

SUBCHAPTER 8I - REVOCATION OF CERTIFICATES AND OTHER DISCIPLINARY ACTION

.0001 DISCIPLINARY ACTION

- (a) Any person may petition the Board for appropriate disciplinary action against a CPA.
- (b) The petition shall set forth in simple language the facts upon which the petition is based. It shall bear an affidavit of the petitioner stating that he believes they believe the facts stated in the petition are true and that he is they are prepared to prove them at a hearing.
- (c) The petition shall be filed in the office of the Board and thereupon it shall be the duty of the Executive Director to notify the enforcement committee about its filing. The Board's professional standards staff shall conduct any appropriate investigation. Based upon its investigation, the professional standards staff may prepare a proposed Hearing Notice. A Professional Standards Committee, appointed by the President of the Board, shall determine whether the allegations in the proposed Hearing Notice, if proven, would warrant a contested case proceeding pursuant to G.S. 150B-38 – 150B-42. This determination will be made without any Board member becoming biased or otherwise prejudiced as to the ultimate determination of the alleged violation.

- (d) After receiving notice of the petition, the enforcement committee shall authorize or conduct any necessary investigation. If a majority of the committee concludes that there is sufficient cause for disciplinary action, the committee shall recommend that the Board set the matter for a hearing conducted pursuant to G.S. 150B-38 – 150B-42. The Board may publish or announce the disciplinary action against a CPA in such manner and for such period as it deems appropriate.

Statutory Authority G.S. 55B-12; 93-12(9).

.0004 MODIFICATION OF DISCIPLINE AND NEW CERTIFICATE

- (a) A person or firm, partnership, or professional corporation, that has been disciplined by the Board may apply to the Board for modification of the discipline at any time after the effective date of the Board's decision imposing it; however, if any previous application has been made with respect to the same discipline, no additional application will be considered before the

lapse of a calendar year following the Board's decision on that previous application. Provided, however, that an application to modify permanent revocation will not be considered until after five years from the date of the original discipline, nor more often than three years after the Board's last decision on any prior application for modification.

(b) The application for modification of discipline or for a new certificate shall be in writing, shall set out and, as appropriate, shall demonstrate good cause for the relief sought. The application for an individual shall be accompanied by at least two ~~three~~ supporting recommendations, made under oath, from CPAs who have personal knowledge of the activities of the applicant since the discipline was imposed. The application for a firm partnership, or professional corporation, shall be accompanied by at least two ~~three~~ supporting recommendations, made under oath, for each partner, member, or shareholder, from CPAs who have personal knowledge of the activities of the partner, member, or shareholder, since the discipline was imposed.

(c) "Good cause" as used in Paragraph (b) of this Rule means that the applicant is completely rehabilitated with respect to the conduct which was the basis of the discipline. Evidence demonstrating such rehabilitation shall include evidence:

- (1) that such person has not engaged in any conduct during the discipline period which, if that person had been licensed or registered during such period, would have constituted the basis for discipline pursuant to G.S. 93-12(9);
- (2) that, with respect to any criminal conviction which constituted any part of the previous discipline, the person has completed the sentence imposed; and
- (3) that, with respect to a court order, restitution has been made to any aggrieved party.

(d) In determining good cause, the Board may consider all the applicant's activities since the disciplinary penalty was imposed, the offense for which the applicant was disciplined, the applicant's activities during the time the applicant was in good standing with the Board, the applicant's rehabilitative efforts, restitution to damaged parties in the matter for which the penalty was imposed, and the applicant's general reputation for truth and professional probity. For the purpose of this Paragraph, "applicant" shall, in the case of a firm, include partners, members, or shareholders.

(e) ~~(d)~~ Any person who applies for a

modification of discipline and for a new certificate after revocation or forfeiture shall, in addition to the other requirements of this Section, comply with all qualifications and requirements for initial certification which exist at the time of the application.

(f) ~~(e)~~ No application for a new certificate or for modification of discipline will be considered while the applicant is serving a sentence for any criminal offense. Serving a sentence includes incarceration, probation (supervised or unsupervised), parole, or suspended sentence, any of which are imposed as a result of having been convicted or plead to a criminal charge.

(g) ~~(f)~~ An application will ordinarily be ruled upon by the Board on the basis of the recommendations and evidence submitted in support thereof. However, the Board may make additional inquiries of any person or persons, or request additional evidence it deems appropriate.

(h) ~~(g)~~ As a condition for a new certificate or modification of discipline, the Board may impose terms and conditions it considers suitable.

~~(h) In considering an application, the Board may consider all the applicant's activities since the disciplinary penalty was imposed, the offense for which the applicant was disciplined, the applicant's activities during the time the applicant was in good standing with the Board, the applicant's rehabilitative efforts, restitution to damaged parties in the matter for which the penalty was imposed, and the applicant's general reputation for truth and professional probity. For the purpose of this Paragraph, "applicant" shall, in the case of a partnership or professional corporation, include partners or shareholders.~~

Statutory Authority G.S. 55B-12; 93-2; 93-12(7a); 93-12(7b); 93-12(9).

SUBCHAPTER 8J - RENEWALS AND REGISTRATIONS

.0001 ANNUAL RENEWAL OF CERTIFICATE, FORFEITURE, AND REAPPLICATION

(a) All active ~~and inactive~~ CPAs must renew their certificates annually by the first day of July. The fee for such renewal is the maximum amount allowed by statute.

(b) To renew a certificate a CPA must submit to the Board:

- (1) a properly completed certificate renewal application form;
- (2) a properly completed CPE report, as

required by 21 NCAC 8G .0406(a); and

(3) the annual renewal fee.

(c) Upon failure of a CPA to comply with any applicable part of Paragraph (b) of this Rule by July 1, the Board will send notice of such failure to the CPA at the most recent mailing address the Board has on file. Subsequent failure of the CPA to comply with any applicable part of Paragraph (b) of this Rule within 30 days after such notice is mailed automatically results in forfeiture of the CPA's certificate, as required by G.S. 93-12(15).

(d) Upon forfeiture of a certificate, the certificate holder is no longer a CPA and the Board will send notice of such forfeiture to the certificate holder by certified mail to the most recent mailing address the Board has on file. The certificate holder shall return the certificate to the Board office within five days after receipt of notice of forfeiture or, if the certificate has been destroyed or lost, shall submit an affidavit, on a form supplied by the Board, within ten days of receipt of such notice that the certificate has been destroyed or has been lost and will be returned to the Board if found.

(e) A person who has forfeited a certificate pursuant to G.S. 93-12(15) for failure to renew ~~his~~ ~~their~~ certificate may apply for a new certificate under 21 NCAC 8I .0004.

Statutory Authority G.S. 93-12(7a); 93-12(8); 93-12(8a); 93-12(8b); 93-12(15).

.0002 SUPERVISION OF CPA OFFICES

Every CPA office or firm which uses any words, letters, abbreviations, symbols or other means of identification to indicate that the office is engaged in the practice of public accountancy shall be actively and locally supervised by a CPA whose primary responsibility and a corresponding amount of time shall be work performed in that office. No person shall be designated as the supervisor or manager of any such office unless he is they are the holder of a North Carolina CPA certificate in good standing.

Statutory Authority G.S. 93-12(8a); 93-12(9).

.0005 RETIRED AND INACTIVE STATUS: CHANGE OF STATUS

(a) A CPA may apply to the Board for change of status to retired status or inactive status provided the CPA meets the description of the appropriate status as defined in 21 NCAC 8A .0301. Application for any status change may be made on the annual certificate renewal form or

another form provided by the Board.

(b) ~~A CPA who meets the description of retired status as defined in 21 NCAC 8A .0301 is not required to change his status from inactive or active. However, a CPA who does not meet the description of inactive or retired as defined in 21 NCAC 8A .0301 may not be or remain on inactive or retired status. Further, a CPA who is or begins working in the field of accounting within this state may not be or remain on inactive status.~~

(c) A CPA on retired status may change ~~his status~~ to active status by:

- (1) paying the certificate renewal fee for the license year in which the application for change of status is received; and
- (2) furnishing the Board with evidence of satisfactory completion of 40 hours of acceptable CPE courses during the 12 month period immediately preceding the CPA's application for change of status. Eight of the required hours must be credits derived from a course or examination in North Carolina accountancy statutes and rules (including the Code of Professional Ethics and Conduct contained therein) as set forth in 21 NCAC 8G .0401(a).

(d) A CPA on retired status may change ~~his status~~ to inactive status by ~~paying the certificate renewal fee for the license year in which the application for change of status is received~~ surrendering ~~their~~ certificate.

(e) ~~A CPA Any individual~~ on inactive status may change ~~his~~ ~~status~~ to active status by complying with the ~~requirement in Paragraph (e)(2) of this Rule requirements of 21 NCAC 8J .0006(c)~~.

Statutory Authority G.S. 93-12(8); 93-12(8b).

.0006 SURRENDER OF CERTIFICATE AND REINSTATEMENT

(a) A certificate holder who determines that the certificate of qualification issued by the Board is no longer needed or desired may voluntarily surrender the certificate and shall be considered inactive.

(b) A person who has surrendered ~~his~~ a certificate is no longer a CPA and thus is not subject to the renewal fee or CPE requirements contained in these Rules.

(c) A person who desires to reinstate ~~his~~ a surrendered certificate shall make application and provide the following to the Board:

- (1) payment of the current certificate

- (2) application fee;
three certificates of moral character and endorsements as to eligibility signed by CPAs holding valid certificates granted by any state or territory of the United States or the District of Columbia; and
(3) evidence of satisfactory completion of the CPE requirement described in 21 NCAC 8J .0005(c)(2).
- (d) The certificate may be reinstated in the discretion of the Board.

Statutory Authority G.S. 93-12(5); 93-12(8a); 93-12(8b).

.0008 FIRM REGISTRATION

(a) All CPA firms must register with the Board within 30 days after opening a North Carolina office or beginning a new firm unless they are to be incorporated a professional corporation, professional limited liability company, or registered limited liability partnership, in which case they must register prior to incorporation formation pursuant to 21 NCAC 8K .0104.

(b) In addition to the initial registration required by Paragraph (a) of this Rule, all CPA firms must register annually by January 31 with the Board upon forms provided by the Board.

(c) The information provided by the registration shall include:

- (1) Either an application for exemption from SQR, a request to be deemed in compliance with SQR or registration for SQR, pursuant to 21 NCAC 8M .0102 and .0104;
- (2) For all firms not exempt from the SQR program, with the registration immediately following its review, the affidavit required by 21 NCAC 8M .0102(d);
- (3) For all North Carolina offices, an office registration form indicating the name of the office supervisor, the location of the office and its telephone number;
- (4) For all partnerships or registered limited liability partnerships, a list of all resident and nonresident partners of the partnership;
- (5) For all professional limited liability companies, the information set forth in 21 NCAC 8K .0104(d);
- (6) For all incorporated firms, the information set forth in 21 NCAC 8K .0104(d);
- (7) For all firms, the appropriate

- registration fees as set forth in 21 NCAC 8J .0010; and
(8) (7) For all new firms, the percentage of ownership held individually by each partner, or shareholder, or member:
(A) in the new firm; and
(B) at the year-end in each firm in which that partner, member, or shareholder was a partner, member, or shareholder during the preceding two years.
(d) All information provided for registration with the Board shall pertain to events of and action taken during the year preceding the year of registration. The last day of the preceding calendar year is the "year-end".

(e) With regard to Paragraph (c)(3) of this Rule, one representative of a firm may file all documents with the Board on behalf of the firm's offices in North Carolina. However, responsibility for compliance with this Rule will remain with each office supervisor.

(f) With regard to Paragraph (c)(4) or (c)(5) of this Rule, one annual listing by a representative of the partnership, registered limited liability partnership, or professional limited liability company shall satisfy the requirement for all partners or members of the firm. However, each partner or member shall remain responsible for compliance with this Rule. The absence of a filing under Paragraph (c)(4) or (c)(5) of this Rule shall be construed to mean that no partnership, registered limited liability partnership, or professional limited liability company exists.

(g) Notice that a firm has dissolved or any change in the information required by Paragraph (c)(3) of this Rule must be delivered to the Board's office within 30 days after the change or dissolution occurs.

(h) Upon written petition by a firm, the Board may, in its discretion, grant the firm a conditional registration for a period of 60 days or less, if the firm shows that circumstances beyond its control prohibited it from registering with the Board, completing a quality review or notifying the Board of change or dissolution pursuant to Paragraphs (a), (b), (c), and (g) of this Rule. The Board may grant a second further extension under extenuating circumstances.

Statutory Authority G.S. 55B-10; 55B-12; 57C-1; 57C-2; 59-84.2; 93-12(8a); 93-12(8c).

.0010 REGISTRATION AND SQR FEES

The annual registration fees shall be as follows:

- (1) For exemption from SQR, ten dollars

- (2) (\$10.00);
- (2) For participation within SQR or for a request to be deemed in compliance with SQR, seventy-five dollars (\$75.00) plus five dollars (\$5.00) for each additional North Carolina office of the firm not excused from SQR by 21 NCAC 8M .0204;
- (3) For all ~~incorporated firms~~ professional corporations or professional limited liability companies, twenty-five dollars (\$25.00); and
- (4) For all non-incorporated firms which have offices both within and outside the state of North Carolina, whether sole proprietorships, or partnerships, or registered limited liability partnerships, an amount equal to two thousand five hundred dollars (\$2,500.00) or the number of owners of the firm multiplied by ten dollars (\$10.00), whichever is less.

Statutory Authority G.S. 55B-11; 55B-12; 57C-1; 57C-2; 59-84.2; 93-12(7b); 93-12(8a); 93-12(8c).

.0011 COMPLIANCE WITH FIRM AND SQR REGISTRATION

If a firm fails to comply with any part of 21 NCAC 8J .0008, 8J .0010 or 8M .0102, the Board may take disciplinary action against the firm's members. Such discipline may include:

- (1) a conditional license upon such conditions as the Board may deem appropriate for non-compliance of less than 60 days;
- (2) a conditional license and one hundred dollar (\$100.00) civil penalty for non-compliance in excess of 60 days but not more than 120 days;
- (3) a suspension of each member's CPA certificate for a period of not less than 30 days for non-compliance in excess of 120 days.

Statutory Authority G.S. 55B-12; 57C-1; 57C-2; 59-84.2; 93-12(8c); 93-12(9).

SUBCHAPTER 8K - PROFESSIONAL CORPORATIONS AND PROFESSIONAL LIMITED LIABILITY COMPANIES

SECTION .1000 - GENERAL PROVISIONS

.0104 REGISTRATION AND RENEWAL

- (a) Domestic CPA professional corporations or professional limited liability companies must be

formed and all CPA professional corporations or professional limited liability companies must be operated in accordance with the requirements set out in G.S. 55B and 57C. Before any CPA professional corporation or professional limited liability company can offer to perform or perform any professional services in this state, it must register with the Board.

(b) Initial registration.

- (1) Domestic CPA Corporation or Professional Limited Liability Company. In order to register initially with this Board, the incorporators of a domestic CPA corporation or professional limited liability company, prior to incorporation of the firm, must:
 - (A) prepare and file with the Board the articles of incorporation along with any supporting documents and appropriate checks for fees payable to the Secretary of State;
 - (B) complete and file with the Board the application for professional corporation or professional limited liability company registration form along with any supporting documents; and
 - (C) pay to the Board an initial registration fee of fifty dollars (\$50.00).
- (2) Foreign CPA Corporation or Foreign Limited Liability Company. To register initially with the Board, the officers of a foreign corporation or foreign limited liability company, prior to performing services or offering to perform services in North Carolina, must submit to the Board:
 - (A) on an application for registration form provided by the Board, a list of its present shareholders or members and the state or territory issuing the CPA certificate, or the equivalent, of each shareholder or member and the number of each certificate or equivalent; and
 - (B) the documents required by G.S. 55A-61, and 55A-62, and 57C-7.
- (c) In addition to its initial registration, every CPA corporation or professional limited liability company, whether domestic or foreign, must register annually pursuant to 21 NCAC 8J .0008.
- (d) The application for registration by a CPA corporation or professional limited liability company shall provide the following information:
 - (1) the name and address of the professional corporation or professional limited

- (2) liability company; the address of each office operated or maintained by the corporation or professional limited liability company;
- (3) the names and addresses of all the officers, directors, ~~and~~ shareholders, or members; and
- (4) the names and addresses of all the employees and managers of the corporation or professional limited liability company licensed by the Board under the provisions of Chapter 93 of the General Statutes of North Carolina.

Statutory Authority G.S. 55B-11; 57C-1; 57C-2; 59-84.2; 93-8; 93-12(7b); 93-12(8c).

.0105 SUPPLEMENTAL REPORTS

(a) The Board may request in writing such supplemental reports as it deems appropriate from any professional corporations or professional limited liability companies registered with the Board pursuant to G.S. 55B, 57C, and these Rules. The professional corporation or professional limited liability company shall file such reports with the Board's office within 30 days from the date it received the request.

(b) In addition to the supplemental reports required by 21 NCAC 8J .0008(g), professional corporations or professional limited liability companies registered with the Board pursuant to G.S. 55B and 57C shall file a certified copy of all amendments to the articles of incorporation or articles of organization within 30 days after the effective date of each amendment. They shall also file a copy of any amendment to the by-laws, certified to be a true copy by the secretary or an assistant secretary of the corporation or professional limited liability company, within 30 days after adoption of the amendment.

Statutory Authority G.S. 55B-12; 57C-1; 57C-2; 93-12(3).

SECTION .0200 - PRACTICE PROCEDURES OF PROFESSIONAL CORPORATIONS

.0201 CORPORATE AND PROFESSIONAL LIMITED LIABILITY COMPANY NAMES

(a) The corporate name of a professional corporation registered under these Rules shall contain the wording "corporation," "incorporated," "limited," "company," "professional corporation,"

or "professional association," or an abbreviation of one of the foregoing: "Corp.," "Inc.," "Ltd.," "Co.," "P.C.," or "P.A." ~~The use of "CPA" or "Certified Public Accountant(s)" in the corporate name is encouraged, but not required. The name shall also meet the requirements in 21 NCAC 8G .0305 and .0306.~~

(b) ~~The corporate name of a professional limited liability company registered under these Rules shall contain the wording "professional limited liability company," "professional ltd. liability co.," "professional limited liability co.," or "professional ltd. liability company," or an abbreviation of one of the foregoing: "P.L.L.C." or "PLLC."~~

(c) ~~The use of "CPA" or "Certified Public Accountant(s)" in the corporate name is encouraged, but not required. Any name shall also meet the requirements in 21 NCAC 8N .0302 and .0307.~~

Statutory Authority G.S. 55B-5; 55B-12; 57C-1; 57C-2.

SECTION .0300 - REGISTERED LIMITED LIABILITY PARTNERSHIPS

.0301 REGISTERED LIMITED LIABILITY PARTNERSHIPS

Any Registered Limited Liability Partnership created pursuant to and in compliance with G.S. 59 shall also comply with all accountancy laws and rules pertaining to partnerships.

Statutory Authority G.S. 93-12; 59-84.2; 59-84.3.

SUBCHAPTER 8M - STATE QUALITY REVIEW PROGRAM

SECTION .0100 - GENERAL SQR REQUIREMENTS

.0102 REGISTRATION REQUIREMENTS

(a) A firm which has not performed any audits, reviews or compilations during the 12 months prior to the year-end of the registration required by 21 NCAC 8J .0008(a) and (b) shall be exempt from the SQR program for the 12 months following the year-end but not from registering with the Board.

(b) Unless exempt under Paragraph (a) of this Rule, each ongoing firm must complete an SQR within 12 months following the year-end of each registration unless it has completed an SQR within 24 months prior to the year-end.

(c) Unless exempt under Paragraph (a) of this Rule, a new firm shall complete its initial SQR within 24 months of the date of its initial registration pursuant to 21 NCAC 8J .0008(a).

(d) Every firm not exempt from SQR by Paragraph (a) of this Rule, after completion of a quality review, must procure an affidavit signed by the review team captain, or other documentation that is considered acceptable by the Board, stating that the firm has completed an SQR or one of the review programs listed or referred to in 21 NCAC 8M .0104. The firm shall submit the affidavit or documentation with the annual registration following the review as set forth in 21 NCAC 8J .0008(c)(2).

(e) For purposes of this Rule, an SQR is complete when the review team has delivered its report required by 21 NCAC 8M .0307 to the reviewed firm. Any quality review other than SQR is complete when the review team has delivered its final report to the reviewed firm. If mailed, a report shall be deemed delivered when postmarked.

Note: For example, firm C was incorporated on June 1, year one. During that year it performed accounting and auditing services and, therefore, was not exempt from the SQR program. It continued to do auditing and accounting work for the next three years (years two, three and four) but it did not do any audits, reviews, or compilations in years five and six. In year seven, the firm completed several compilations but, in year eight, it did not issue any audits, reviews, or compilations. In year nine, the corporation dissolved, at which time it notified the Board of its dissolution pursuant to 21 NCAC 8J .0008(g). The following chart shows the history of firm C as it relates to the SQR program, SQR fees it was required to pay pursuant to 21 NCAC 8J .0010, and when and why it was required to complete an SQR pursuant to this Rule.

<u>Year</u>	<u>Audits, Reviews or Compilations Performed</u>	<u>Fee</u>	<u>Completion of SQR Required and Rationale</u>
1	Yes	SQR Fee	A new firm has 24 months to complete SQR - 21 NCAC 8M .0102(c); the firm is required to complete SQR before June 1, year 3.
2	Yes	SQR Fee	Completes SQR on May 15, year 3 (within 24 months of its inception) 21 NCAC 8M .0102(c).
4	Yes	SQR Fee	Not required to complete SQR in year 5 because the firm completed SQR on May 15, year 3 (within 24 months of year-end of year 4) - 21 NCAC 8M .0102(b).
5	No	Exempt Fee	Will not be required to complete SQR in year 6 because it is exempt - 21 NCAC 8M .0102(a).
6	No	Exempt Fee	Not required to complete SQR in

7	Yes	SQR Fee	year 7 because it is exempt - 21 NCAC 8M .0102(a).
8	No	Exempt Fee	Will be required to complete SQR in year 8 because it has not completed SQR within 24 months of year-end of year 7 (last SQR was completed May 15, year 3) - 21 NCAC 8M .0102(b).
9	Yes	No Fee	Completes SQR pursuant to its registration in year 7 - 21 NCAC 8M .0102(b).

Statutory Authority G.S. 93-12(7b); 93-12(8c).

SECTION .0200 - DUTIES OF THE REVIEWED FIRM

.0201 SELECTION OF ENGAGEMENTS TO BE REVIEWED

(a) Each office of the reviewed firm not excused under 21 NCAC 8M .0204 shall select a set of three engagements to be submitted for review.

(b) A set of engagements for review shall include the accountant's report and financial statements for one audit, one review, and one compilation, if these three levels of service have been performed by the office within the 12 months preceding the year-end.

(1) If one or more levels of service have not been performed, the office shall select reports of the next highest level of service for a total of three reports submitted.

(2) If, of the three levels of service, only compilations have been performed by the office, the set of three engagements shall include at least one compilation report on a complete set of financial statements which includes disclosures and one compilation report on a financial statement where management has elected to omit substantially all of the disclosures normally required by generally accepted accounting principles set forth in 21 NCAC 8G-.0202 8N .0209, if both types of compilations are performed.

- (c) The review team captain:
- (1) must have five years' experience or more as a CPA in the accounting and auditing function;
 - (2) must be a member or employee of a firm which has completed an SQR or other quality review listed or referred to in 21 NCAC 8M .0104 within the last three years but which has not received an adverse report on its most recent quality review;
 - (3) must be a manager (or the equivalent) within his/her firm; and
 - (4) must have day-to-day involvement in auditing and accounting procedures which is sufficiently comprehensive to enable him/her to perform and oversee the SQR with professional expertise.
- (d) If a firm to be reviewed does a governmental audit, it shall be included in the set of engagements.

Statutory Authority G.S. 93-12(8c).

SECTION .0300 - REVIEW TEAM: QUALIFICATIONS AND DUTIES

.0301 QUALIFICATIONS OF REVIEWERS AND TEAM CAPTAINS

(a) A reviewer must be a CPA on active status licensed in any state of the United States, be in good standing with the CPA boards by which (s)he is they are licensed to practice public accounting.

possess current knowledge of the code of professional ethics and conduct, and possess current knowledge of the accounting and auditing standards applicable to the engagements to be reviewed by him/her them. However, (s)he one need not possess knowledge of the applicable accounting and auditing standards with regard to every engagement involved in the review, unless (s)he one is the only member of a review team.

(b) A reviewer shall not have been disciplined for violation of 21 NCAC 8G .0311 or .0312 8N .0202 or .0408 within the five years preceding the date the review engagement is entered.

(c) The review team captain:

- (1) must have five years' experience or more as a CPA in the accounting and auditing function;
- (2) must be a member or employee of a firm which has completed an SQR or other quality review listed or referred to in 21 NCAC 8M .0104 within the last three years but which has not received an adverse report on its most recent quality review;
- (3) must be a manager (or the equivalent) within his/her their firm; and
- (4) must have day-to-day involvement in auditing and accounting procedures which is sufficiently comprehensive to enable him/her one to perform and oversee the SQR with professional expertise.

Statutory Authority G.S. 93-12(8c).

.0304 PERFORMING THE REVIEW - REVIEWER'S DUTIES

(a) The objective of the review shall be to determine that the financial statements and related accountant's report on the audit, review or compilation engagements submitted for review do not depart in a material respect from the requirements of professional standards set forth in 21 NCAC 8G .0201-.0203 and 8G .0208-.0212 8N .0209-.0211, .0304, and .0403-.0406.

(b) The review team shall read the financial statements submitted by the participating firm and the accountant's audit, review or compilation report thereon.

(c) The review team must determine whether each of the accountant's report and financial statements conform with the applicable professional standards set forth in 21 NCAC 8G .0201-.0203 and 8G .0208-.0212 8N .0209-.0211, .0304, and .0403-.0406.

Statutory Authority G.S. 93-12(8c).

SUBCHAPTER 8N – PROFESSIONAL ETHICS AND CONDUCT

SECTION .0100 – SCOPE AND APPLICABILITY

.0101 SCOPE OF THESE RULES

(a) The rules in this Subchapter are the rules of professional ethics and conduct which G.S. 93-12(9) authorizes the Board to adopt. As such, they complement the other statutory causes for discipline set out in G.S. 93-12 (9)(a) through (d) and other provisions of G.S. 93, 55B, 57C, and 59-84. These Rules cover a broad range of behavior and do not enumerate every possible unethical act.

(b) In the interpretation and enforcement of these Rules, the Board will give consideration, but not necessarily dispositive weight, to relevant interpretations, rulings and opinions issued by the boards of other jurisdictions and by appropriately authorized ethics committees of professional organizations.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0102 APPLICABILITY AND ORGANIZATION OF RULES

These Rules are generally applicable to all certificate holders. Rules in Section .0200 of this Subchapter relate to CPAs whether or not employed in the public practice of accountancy. Rules in Section .0300 of this Subchapter pertain to CPAs using the CPA title in connection with providing products or services to clients. Rules in Section .0400 of this Subchapter pertain to CPAs whenever engaged in attest services.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0103 CPAs OUTSIDE NORTH CAROLINA

A CPA living and working outside North Carolina and not rendering services for North Carolina clients is not subject to discipline for departing from North Carolina's professional standards as long as the CPA complies with any jurisdiction's accountancy laws, rules, or professional standards applicable to the CPA. However, when a CPA is associated with financial statements in such a manner as to imply that the CPA is acting as an independent public accountant

and under circumstances that would entitle the reader to assume that United States practices were followed, the CPA must comply with the requirements set forth in 21 NCAC 8N .0402.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0104 RESPONSIBILITY FOR COMPLIANCE BY OTHERS

A CPA shall be responsible for assuring compliance with the rules in this Subchapter by anyone who is the CPA's partner, fellow shareholder, or unlicensed principal, or whom the CPA supervises. A CPA or CPA firm shall not permit others (including affiliated entities) to carry out on the CPA's behalf, with or without compensation, acts which if carried out by the CPA would be a violation of these Rules. A CPA firm shall be responsible for assuring compliance with these Rules by any officer, director, shareholder, unlicensed principal, partner, proprietor, employee, or agent.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

SECTION .0200 - RULES APPLICABLE TO ALL CPAs

.0201 INTEGRITY

The reliance of the public and the business community on sound financial reporting and advice on business affairs imposes on the accounting profession an obligation to maintain high standards of technical competence, morality, and integrity. To this end, a CPA shall at all times maintain independence of thought and action, hold the affairs of their clients in strict confidence, strive continuously to improve their professional skills, observe generally accepted accounting principles and standards, promote sound and informative financial reporting, uphold the dignity and honor of the accounting profession, and maintain high standards of personal conduct.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0202 DECEPTIVE CONDUCT PROHIBITED

(a) Deception Defined. A CPA shall not engage in deceptive conduct. Deception includes fraud or misrepresentation and representations or omissions which a CPA either knows or should know have a capacity or tendency to deceive. Deceptive

conduct is prohibited whether or not anyone has been actually deceived. Deception includes not only deceptive statements but also includes the knowing failure to disclose material facts.

(b) Prohibited Deception. Prohibited conduct under this Section includes but is not limited to deception in:

- (1) obtaining or maintaining employment;
- (2) obtaining or keeping clients;
- (3) obtaining or maintaining certification, retired status, or exemption from SOR; reporting CPE credits;
- (4) certifying the character or experience of exam or certificate applicants;
- (5) implying abilities not supported by valid education, professional attainments, or licensing recognition;
- (6) asserting that services or products sold in connection with use of the CPA title are of a particular quality or standard when they are not;
- (7) creating false or unjustified expectations of favorable results;
- (8) using or permitting another to use the CPA title in a form of business not permitted by the accountancy laws or rules;
- (9) permitting a person or firm not certified in this state (including one licensed in another state) to unlawfully use the CPA title in this state; or
- (10) falsifying a review, report, or any required program or checklist of any quality review program.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0203 DISCREDITABLE CONDUCT PROHIBITED

(a) Discreditable Conduct. A CPA shall not engage in conduct discreditable to the accounting profession.

(b) Prohibited Discreditable Conduct. Discreditable conduct includes but is not limited to:

- (1) acts that reflect adversely on the CPA's honesty, integrity, trustworthiness, good moral character, or fitness as a CPA in other respects; or
- (2) stating or implying an ability to improperly influence a governmental agency or official.

Statutory Authority G.S. 55B-12; 57C-2-01.

93-12(9).

.0204 DISCIPLINE BY FEDERAL AND STATE AUTHORITIES

(a) Violations of Other Authorities' Laws or Rules. A CPA shall not act in a way that would cause said CPA to be disciplined by federal or state agencies or boards for violations of laws or rules on ethics. CPAs who engage in activities regulated by other federal or state authorities (including but not limited to the following agencies: IRS, Department of Revenue, SEC, State Bar, North Carolina Secretary of State, Department of Insurance, GAO, HUD, State Auditor, State Treasurer, or Local Government Commission) must comply with all such authorities' ethics laws and rules.

(b) Prima Facie Evidence. A conviction or final finding of unethical conduct by a competent authority is *prima facie* evidence of a violation of this Rule.

(c) Notice to the Board Required. A CPA shall notify the Board in writing within 30 days of any conviction or final finding of unlawful conduct by any federal or state court or regulatory authority.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0205 CONFIDENTIALITY

(a) Nondisclosure. A CPA shall not disclose any confidential information obtained in the course of employment or a professional engagement except with the consent of the employer or client.

(b) Exceptions. This Rule shall not be construed:

- (1) to relieve a CPA of any report obligations pertaining to Section .0400 of this Subchapter; or
- (2) to affect in any way the CPA's compliance with a validly issued subpoena or summons enforceable by this Board or by order of a court; or
- (3) to preclude the CPA from responding to any inquiry made by the AICPA Ethics Division or Trial Board, by a duly constituted investigative or disciplinary body of a state CPA society, or under state statutes; or
- (4) to disclose confidential client information necessary for the SQR process or for any quality review program.

Statutory Authority G.S. 55B-12; 57C-2-01;

93-12(9).

.0206 COOPERATION WITH BOARD INQUIRY

A CPA shall fully cooperate with the Board in connection with any inquiry it shall make. Full cooperation includes fully responding in a timely manner to all inquiries of the Board or representatives of the Board and claiming Board correspondence from the U.S. Postal Service.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0207 VIOLATION OF TAX LAWS

A CPA shall not knowingly violate any state or federal tax laws in handling the CPA's personal business affairs, or the business affairs of an employer or client, or the business affairs of any company owned by the CPA.

Statutory Authority G.S. 93-12(9).

.0208 REPORTING CONVICTIONS, JUDGMENTS, AND DISCIPLINARY ACTIONS

(a) Criminal Actions. A CPA shall notify the Board within 30 days of any conviction or finding of guilt of, or pleading of *nolo contendere* to:

- (1) a felony; or
- (2) any crime an essential element of which is dishonesty, deceit, fraud, a violation of federal or state tax law, or a violation of the rules of Professional Ethics and Conduct contained in this Subchapter.

(b) Civil Actions. A CPA shall notify the Board within 30 days of any judgment or settlement in a civil suit, the basis of which is grounded upon an allegation of gross negligence, dishonesty, fraud, misrepresentation, incompetency, or violation of any federal or state tax law and which was brought against either the CPA or a firm by which the CPA was employed or of which the CPA was a member.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0209 ACCOUNTING PRINCIPLES

(a) Generally Accepted Accounting Principles. A CPA shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such statements contain any departure from an

accounting principle which has a material effect on the statements taken as a whole, unless the CPA can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading.

(b) Statements of Financial Accounting Standards. The Statements of Financial Accounting Standards, together with those Accounting Research Bulletins and Accounting Principles Board Opinions which are not superseded by action of the FASB, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered generally accepted accounting principles for the purposes of Paragraph (a) of this Rule.

(c) Departures. In such cases the CPA's report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

(d) Copies of Standards. Copies of the Statements of Financial Accounting Standards may be inspected in the offices of the Board, as described in 21 NCAC 8A .0102. Copies may be obtained from the FASB, High Ridge Park, Post Office Box 3821, Stamford, CT 06905-0821 as part of the "FASB Accounting Standards." They are available at cost, which is approximately thirty-four dollars (\$34.00) in paperback form or three hundred eighty-three dollars (\$383.00) in looseleaf subscription form.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0210 FORECASTS

(a) Forecast of Future Transactions. A CPA shall not permit the CPA's name to be used in conjunction with any forecast of future transactions in a manner which may lead to the belief that the CPA vouches for the achievability of the forecast.

(b) Applicable Standards. A CPA shall not render services associated with prospective financial statements unless the CPA has complied with the standards for accountants' services on prospective financial information.

(c) Statements on Standards. The Statements on Standards for Accountants' Services on Prospective Financial Information issued by the AICPA are adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for services on prospective financial information for the purposes of Paragraph (b) of this Rule.

(d) Departures. Departures from such

statements must be justified by those who do not follow them.

(e) Copies of Standards. Copies of the Statements on Standards for Accountants' Services on Prospective Financial Information may be inspected in the offices of the Board as described in 21 NCAC 8A .0102. Copies may be obtained from the AICPA, 1211 Avenue of the Americas, New York, NY 10036 as part of the "AICPA Professional Standards." They are available at cost, which is approximately twenty-eight dollars (\$28.00) in paperback form or two hundred dollars (\$200.00) in looseleaf subscription form.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0211 RESPONSIBILITIES IN TAX PRACTICE

(a) Standards for Tax Services. A CPA shall not render services in the area of taxation unless the CPA has complied with the standards for tax services.

(b) Statements on Responsibilities. The Statements on Responsibilities in Tax Practice issued by the AICPA are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for tax services for the purposes of Paragraph (a) of this Rule.

(c) Departures. Departures from such statements must be justified by those who do not follow them.

(d) Copies of Standards. Copies of the Statements of Responsibilities in Tax Practice may be inspected in the offices of the Board, as described in 21 NCAC 8A .0102. Copies may be obtained from the AICPA, 1211 Avenue of the Americas, New York, NY 10036 as part of the "AICPA Professional Standards." They are available at cost, which is approximately twenty-eight dollars (\$28.00) in paperback form or two hundred dollars (\$200.00) in looseleaf subscription form.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0212 COMPETENCE

A CPA shall perform professional services competently and shall:

- (1) undertake only those engagements which the CPA or CPA's firm can reasonably expect to complete with professional competence;

- (2) exercise due professional care in the performance of an engagement;
- (3) adequately plan and supervise an engagement; and
- (4) obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to an engagement.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0213 OTHER RULES

A CPA shall not willfully violate any other rule in this Chapter nor any other provision of the Accountancy Statutes, the Professional Corporation Act, or the North Carolina Limited Liability Company Act.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

SECTION .0300 - RULES APPLICABLE TO ALL CPAs WHO USE THE CPA TITLE IN OFFERING OR RENDERING PRODUCTS OR SERVICES TO CLIENTS

.0301 PROFESSIONAL JUDGMENT

(a) Professional Judgment. A CPA shall not subordinate the CPA's professional judgment to non-CPAs.

(b) Tax Practice. In tax practice, the CPA may resolve doubt in favor of the CPA's client as long as there is reasonable support for the CPA's position.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0302 FORMS OF PRACTICE

(a) Authorized Forms of Practice. A CPA shall not directly or indirectly offer or render accounting services (including tax and management advisory services) to clients except through a duly authorized CPA sole proprietorship, partnership of CPAs, CPA Professional Corporation, Professional Limited Liability Company, or Registered Limited Liability Partnership.

(b) Authorized Partners. A CPA shall not engage in the public practice of accountancy with a partner who is anyone other than the holder of an unrevoked and currently valid CPA certificate.

(c) Ancillary Practice. A CPA may, through another lawful form of professional practice, offer or render such non-attest accounting services as

are ancillary to another learned profession regulated by a statutorily authorized licensing board in this state; further provided, the CPA offers or renders those services through a business form authorized by the respective licensing board and does not hold out the non-CPA firm as CPA firm. Any such CPA must nevertheless register for SQR as an exempt individual practitioner.

(d) Other Forms. This Rule does not prohibit a CPA from providing sales or services to clients through other business forms so long as the CPA does not directly nor indirectly use the CPA title in any way in connection with said business and the business does not sell to or service the CPA's accounting clients.

(e) Unlicensed Principals. A CPA may practice in a firm that includes unlicensed principals only if:

- (1) the unlicensed principal is not a member of the firm under G.S. 93-4;
- (2) the unlicensed principal has no supervision authority over CPAs;
- (3) the unlicensed principal does not use the CPA title, is not licensed in another state, and is not listed in advertising, directories, signs, or stationery in a way that implies the unlicensed principal is a CPA;
- (4) the unlicensed principal does not have ownership interest in more than one firm;
- (5) actively licensed CPAs have two-thirds ownership and control of management of the firm;
- (6) unlicensed principals do not assume responsibilities in the attest areas;
- (7) unlicensed principals possess at least a baccalaureate degree and, beginning in the year 2001, obtain 150 semester hours of education at an accredited college or university;
- (8) unlicensed principals are at all times active participants and not passive investors; and
- (9) unlicensed principals are of good moral character and adhere to all applicable rules of professional ethics and conduct.

(f) Firm Registration Required. A CPA shall not engage in the public practice of accountancy through a firm which is in violation of the registration requirements of 21 NCAC 8J .0008, 8J .0010, or the SQR requirements of 21 NCAC 8M .0102.

(g) Supervision of CPA Offices. Every CPA office or CPA firm in North Carolina shall be

actively and locally supervised by a designated actively licensed North Carolina CPA whose primary responsibility and a corresponding amount of time shall be work performed in that office.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0303 OBJECTIVITY AND CONFLICTS OF INTEREST

(a) Personal Financial Interest in Advice. When offering or rendering accounting or related financial, tax, or management advice, a CPA shall be objective and shall not place the CPA's own financial interests nor the financial interests of a third party ahead of the legitimate financial interests of the CPA's client or the public in any context in which a client or the public can reasonably expect objectivity from one using the CPA title.

(b) Expectation of Objectivity Presumed. If the CPA uses the CPA title in any way to obtain or maintain a client relationship, the Board will presume the reasonable expectation of objectivity.

(c) Acceptance of a Commission or Referral Fee. A CPA shall not pay a commission to obtain a client, nor accept a commission for a referral to a client, of products or services of others. This Rule shall not prohibit payments for the purchase of an accounting practice, retirement payments to individuals formerly engaged in the practice of public accounting, or payments to their heirs or estates.

(d) Acceptance of a Contingent Fee.

(1) The offering or rendering of professional services for, or the receipt of, a disclosed contingent fee by a CPA is not prohibited except for engaging to render or rendering by a CPA for a contingent fee:

(A) of professional services for, or the receipt of such a fee from, any person for whom the CPA also performs attest services, during the period of the attest services engagement and the period covered by any historical financial statements involved in such attest services; and

(B) for the preparation of original or amended tax returns or claims for tax refunds.

(2) Fees are not regarded as being contingent if fixed by courts or other public authorities or, in tax matters, if determined based on the results of

judicial proceedings or the findings of governmental agencies.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0304 MANAGEMENT ADVISORY SERVICES STANDARDS

(a) Standards for Management Advisory Services. A CPA shall not render management advisory services unless the CPA has complied with the standards for management advisory services.

(b) Statements on Standards for Management Advisory Services. The Statements on Standards for Management Advisory Services (including the definition of such services) issued by the AICPA are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for management advisory services for the purposes of Paragraph (a) of this Rule.

(c) Departures. Departures from such statements must be justified by those who do not follow them.

(d) Copies of Statements. Copies of the Statements on Standards for Management Advisory Services may be inspected in the offices of the Board, as described in 21 NCAC 8A .0102. Copies may be obtained from the AICPA, 1211 Avenue of the Americas, New York, NY 10036 as part of the "AICPA Professional Standards." They are available at cost, which is approximately ten dollars (\$10.00) in paperback form or two hundred dollars (\$200.00) in looseleaf subscription form.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0305 RETENTION OF CLIENT RECORDS

(a) Return upon Demand. A CPA must return client records in their possession to the client after a demand is made for their return. If the client is a partnership, records shall be returned upon request to any of its general partners. If the client is a corporation, records shall be returned upon request to its president. Joint records are to be returned upon request to any party. The records must be returned immediately upon demand unless circumstances make some delay reasonable in order to retrieve a closed file or to extract the CPA's work papers described in Paragraph (e) of this Rule. If the records cannot be returned immediately upon demand, the CPA will immediately notify the client of the date the

records will be returned. Nothing in this Rule shall be interpreted to require a CPA to pay delivery costs when the records are returned to the client and the business does not sell or serve to the CPAs.

(b) Return of Original Records. If a CPA is engaged to perform certain work for a client, the CPA is only required to return or furnish copies of those records originally given to the CPA by the client if one of the following occurs:

- (1) the engagement is terminated prior to the completion of such work, or
- (2) the CPA's work product has neither been received nor paid for by the client.

(c) Retention to Force Payment. A CPA shall not retain a client's records in order to force payment of any kind.

(d) Work Papers Included in Client Records. Work papers are usually the CPA's property and need not be surrendered to the client. However, in some instances work papers will contain data which should properly be reflected in the client's books and records but for convenience have not been duplicated therein with the result that the client's records are incomplete. In such instances, the portion of the work papers containing such data constitutes part of the client's records, and copies should be given to the client along with the rest of the client's records. Work papers considered part of the client's records include but are not limited to:

- (1) Worksheets in lieu of original entry (e.g., listings and distributions of cash receipts or cash disbursements on columnar work paper);
- (2) Worksheets in lieu of general ledger or subsidiary ledgers, such as accounts receivable, job cost and equipment ledgers, or similar types of depreciation records;
- (3) All adjusting and closing journal entries and supporting details not fully set forth in the journal entry; and
- (4) Consolidating or combining journal entries and worksheets and supporting detail used in arriving at final figures incorporated in an end product such as financial statements or tax returns.

(e) Work Papers Belonging to the CPA. Work papers developed by the CPA incident to the performance of an engagement which do not result in changes to the client's records, or are not in themselves part of the records ordinarily maintained by such clients, are considered to be

solely the CPA's work papers and are not the property of the client. For example, the CPA may make extensive analyses of inventory or other accounts as part of the selective audit procedures. These analyses are considered to be a part of the CPA's work papers, even if the analyses have been prepared by client personnel at the request of the CPA. Only to the extent these analyses result in changes to the client's records would the CPA be required to furnish the details from the work papers in support of the journal entries recording the changes, unless the journal entries themselves contain all necessary details.

(f) Reasonable Fees for Copies. Nothing in this Rule shall be construed to require the CPA to furnish a client with copies of the client's records already in the client's possession. However, if the client asserts that such records have been lost, or are otherwise not in the client's possession, the CPA shall furnish copies of the records within a reasonable time for a fee.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0306 ADVERTISING OR OTHER FORMS OF SOLICITATION

(a) Deceptive Advertising. A CPA shall not seek to obtain clients by advertising or using other forms of solicitation in a manner that is deceptive.

(b) Specialty Designations. A CPA may advertise the nature of services provided to clients but the CPA shall not advertise or indicate a specialty designation or other title unless the CPA has met the requirements of the granting organization for the separate title or specialty designation.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0307 FIRM NAMES

(a) Deceptive Names Prohibited. A CPA or CPA firm shall not trade upon the CPA title through use of any name that would have the capacity or tendency to deceive.

(b) Style of Practice. It is considered misleading if a firm practices under a name or style which would tend to imply the existence of a partnership or registered limited liability partnership or a professional corporation or limited liability company of more than one shareholder or member or an association when in fact there is no partnership nor is there more than one shareholder or member in the firm. For example, no firm

having just one owner may have as a part of its name the words "associates" or "company" or their abbreviations.

(c) Assumed Names Subject to Approval. Before any firm uses an assumed name (as described in G.S. 66-68) it must submit the proposed name for Board approval.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

SECTION .0400 - RULES APPLICABLE TO CPAs PERFORMING ATTEST SERVICES

.0401 PUBLIC RELIANCE

Certain practice rules only regulate those CPAs who perform services upon which the public relies. These Rules apply to any CPA who engages in the attest functions such as audit, compilation, review, exam, forecast, and projection, as defined in 21 NCAC 8A .0301(b). CPAs who engage in such services are also subject to the SQR requirements of Subchapter 8M.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0402 INDEPENDENCE

(a) A CPA, or their firm, who is performing an engagement in which the CPA, or their firm, will issue a report on financial statements of any client (other than a report in which lack of independence is disclosed) must be independent with respect to the client in fact and appearance.

(b) Independence is impaired if, for example, during the period of the professional engagement, or at the time of issuing the report, the CPA or their firm:

- (1) had or was committed to acquire any direct or material indirect financial interest in the client;
- (2) was a trustee of any trust or executor or administrator of any estate that had or was committed to acquire any direct or material indirect financial interest in the client;
- (3) had a joint or closely held business investment with the client or any officer, director, or principal stockholder thereof which was material in relation to the net worth of the client, the CPA, or their firm; or
- (4) had any loan to or from the client or any officer, director, or principal stockholder thereof other than loans of

the following kinds made by a financial institution under normal lending procedures, terms, and requirements:

- (A) loans obtained by the CPA or their firm which are not material in relation to the net worth of the borrower;
- (B) home mortgages; and
- (C) other secured loans, except those secured solely by a guarantee of the CPA or their firm.

(c) Independence will also be considered to be impaired if, during the period covered by the financial statements, during the period of the professional engagement, or at the time of issuing the report, the CPA:

- (1) was connected with the client as a promoter, underwriter, voting trustee, director, officer, or in any capacity equivalent to that of a member of management or of an employee; or
- (2) was a trustee for any person or profit-sharing trust of the client.

(d) The examples in this Rule are not intended to be all-inclusive.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0403 AUDITING STANDARDS

(a) Standards for Auditing Services. A CPA shall not render auditing services unless the CPA has complied with the applicable generally accepted auditing standards.

(b) Statements on Auditing Standards. The Statements on Auditing Standards issued by the AICPA are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered generally accepted auditing standards for the purposes of Paragraph (a) of this Rule.

(c) Departures. Departures from such statements must be justified by those who do not follow them.

(d) Copies of Statements. Copies of the Statements on Auditing Standards may be inspected in the offices of the Board, as described in 21 NCAC 8A .0102. Copies may be obtained from the AICPA, 1211 Avenue of the Americas, New York, NY 10036 as part of the "AICPA Professional Standards." They are available at cost, which is approximately twenty-eight dollars (\$28.00) in paperback form or two hundred dollars (\$200.00) in looseleaf subscription form.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0404 ACCOUNTING AND REVIEW SERVICES STANDARDS

(a) Standards for Accounting and Review Services. A CPA shall not render accounting and review services unless the CPA has complied with the standards for accounting and review services.

(b) Statements on Standards for Accounting and Review Services. The Statements on Standards for Accounting and Review Services issued by the AICPA are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for accounting and review services for the purposes of Paragraph (a) of this Rule.

(c) Departures. Departures from such statements must be justified by those who do not follow them.

(d) Copies of Statements. Copies of the Statements on Standards for Accounting and Review Services may be inspected in the offices of the Board, as described in 21 NCAC 8A .0102. Copies may be obtained from the AICPA, 1211 Avenue of the Americas, New York, NY 10036 as part of the "AICPA Professional Standards." They are available at cost, which is approximately twenty-eight dollars (\$28.00) in paperback form or two hundred dollars (\$200.00) in looseleaf subscription form.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0405 GOVERNMENTAL ACCOUNTING STANDARDS

(a) Standards for Governmental Accounting. A CPA shall not permit the CPA's name to be associated with governmental financial statements for a client unless they have complied with the standards for governmental accounting.

(b) Statements on Governmental Accounting and Financial Reporting Services. The Statements on Governmental Accounting and Financial Reporting Services issued by the GASB are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for governmental accounting for the purposes of Paragraph (a) of this Rule.

(c) Departures. Departures from such statements must be justified by those who do not follow them.

(d) Copies of Statements. Copies of the Statements on Governmental Accounting and Financial Reporting Standards, including technical bulletins and interpretations, may be inspected in the offices of the Board, as described in 21 NCAC

8A .0102. Copies may be obtained from the GASB, Post Office Box 9125, Dept. 285, Stamford, CT 06925. They are available at cost, which is approximately forty-seven dollars and fifty cents (\$47.50). In addition to the basic set, an updating subscription service is available for approximately sixty-five dollars (\$65.00) annually.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0406 ATTESTATION STANDARDS

(a) Standards for Attestation Services. A CPA shall not render attestations services unless the CPA has complied with the applicable attestations standards.

(b) Statements on Standards for Attestation Engagements. The Statements on Standards for Attestation Engagements issued by the AICPA are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered attestations standards for the purposes of Paragraph (a) of this Rule.

(c) Departures. Departures from such statements must be justified by those who do not follow them.

(d) Copies of Statements. Copies of the Statements on Standards for Attestation Engagements may be inspected in the offices of the Board, as described in 21 NCAC 8A .0102. Copies may be obtained from the AICPA, 1211 Avenue of the Americas, New York, NY 10036 as part of the "AICPA Professional Standards." They are available at cost, which is approximately thirty dollars (\$30.00) in paperback form or two hundred dollars (\$200.00) in looseleaf subscription form.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0407 COMPETITIVE BIDDING

Regarding an invitation for competitive bids on attest services, it shall be discreditable for a CPA or CPA firm to knowingly offer to perform said services below cost for the purposes of injuring or destroying competition; provided, it shall not be a violation to do so in order to meet competition. Nothing herein shall be construed to prohibit competitive bidding nor establish a minimum price of any CPA service.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

.0408 QUALITY REVIEW STANDARDS

A CPA who is engaged to perform a quality review shall not violate the rules or standards of the quality review program under which the review is made or the engagement contract connected with that quality review.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Electrolysis Examiners intends to amend rule cited as 21 NCAC 19 .0202 and adopt rule cited as 21 NCAC 19 .0622.

The proposed effective date of this action is February 1, 1994.

The public hearing will be conducted at 10:00 a.m. on December 6, 1994 at the State Employees Credit Union Building, Fourth Floor Conference Room, 801 Hillsborough Street, Raleigh, NC.

Reason for Proposed Action:

21 NCAC 19 .0202 - To account for statutory changes and to include provisions for licensing under G.S. 88A-10 and G.S. 88A-11(2).

21 NCAC 19 .0622 - To inform the public of the Board's requirement for certifying out-of-state schools.

Comment Procedures: The record of hearing will be open for receipt of written comments from November 1, 1993 through December 6, 1993. Written comments must be delivered to the Board at its mailing address (801 Hillsborough Street, P.O. Box 10834, Raleigh, NC 27605-0836). Anyone wishing to speak at the hearing should notify Trudy Brown in writing at the Board's mailing address no later than 5:00 p.m. the day before the meeting. Anyone whose written request to speak is not received by this deadline will be able to speak only as time permits.

Editor's Note: 21 NCAC 19 .0202 was filed as a temporary amendment effective October 13, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 19 - BOARD OF ELECTROLYSIS EXAMINERS

SECTION .0200 - APPLICATION PROCEDURES

.0202 APPLICATION FOR LICENSURE

(a) Anyone engaged in the practice of electrolysis in this State before January 1, 1992, who seeks licensure as an electrologist without examination under the provisions of G.S. 88A-11(1), All applicants for licensure as an electrologist shall submit an application on the form provided by the Board, accompanied by proof of age, proof of practice before January 1, 1992, statement from ophthalmologist or optometrist that vision or corrected vision is sufficient to perform duties as an electrologist, recent photograph, the required application fee, any information required by Paragraphs (b) and (c) of this Rule, and if applicable, proof of completion of high school or equivalency certificate and certification of completion from each electrolysis institution attended with verification of the number of hours completed in theory and clinical training.

(b) All applications for licensure under this Section G.S. 88A-11(1) must be:

- (1) accompanied by proof of practice before the statutory deadline; and
- (2) either actually received by the Board or postmarked on or before the statutory deadline for applications December 31, 1994.

(c) All applications for licensure under G.S. 88A-11(2) must be accompanied by:

- (1) the address of the licensing agency in the other state or jurisdiction;
- (2) any information such as a license number needed to identify the applicant in correspondence with that agency; and
- (3) a statement authorizing that agency to certify to the Board that the applicant is currently licensed or certified by the other state or jurisdiction and is in good standing, to inform the Board whether there are any pending complaints about the applicant, and to provide the Board with a copy of the licensing requirements in that state or jurisdiction.

(d) (e) Proof of age shall be shown by certified copy of a birth certificate. If the applicant cannot obtain a certified copy of the birth certificate, the applicant shall attach an explanation why no birth certificate is obtainable and shall submit other proof of age. Other proof of age includes pass-

ports, current life insurance policies held for at least one year showing date of birth, entries in family bibles, medical or school records showing date of birth, and marriage licenses showing age.

(e) (d) Proof of practice before the prior practice deadline set in G.S. 88A-11(a) January 1, 1992 may be shown by sworn affidavit of a person unrelated to the applicant stating that the applicant did practice electrology in North Carolina before that date January 1, 1992. The affidavit shall also state where the applicant practiced.

(f) (e) The Board may reject incomplete or partial applications.

Statutory Authority G.S. 88A-6; 88A-9; 88A-10; 88A-11(1); 88A-21.

SECTION .0600 - SCHOOLS

.0622 CERTIFICATION OF SCHOOLS IN OTHER STATES OR JURISDICTIONS

(a) The Board will certify a school in another state or jurisdiction for purposes of G.S. 88A-10 provided that:

- (1) The school applies for certification, submits the information required by G.S. 88A-19(a)(1)-(6), and meets the requirements of 21 NCAC 19 .0602, .0606, .0607, .0608, and .0609;
- (2) If the school is in a state or jurisdiction that approves electrolysis schools, the school is approved by the proper agency for that state or jurisdiction; and
- (3) The school has a curriculum of at least 600 hours.

(b) A school located in another state or jurisdiction shall pay an application fee of fifty dollars (\$50.00) and a yearly certification fee of twenty-five dollars (\$25.00).

(c) The Board will revoke the certification of a school in another state or jurisdiction upon a proof that the school in a jurisdiction that licenses electrologists has lost its approval in that state.

(d) The school must agree to teach North Carolina's sanitation standards to any student who states to the school an intention of taking North Carolina's licensing examination.

Statutory Authority G.S. 88A-6; 88A-9; 88A-19; 88A-21.

* * * * *

Notice is hereby given in accordance with G.S.

150B-21.2 that the Board of Medical Examiners of the State of North Carolina intends to amend rules cited as 21 NCAC 32M .0006 and .0009.

T*he proposed effective date of this action is March 1, 1994.*

T*he public hearing will be conducted at 4:30 p.m. on November 17, 1993 at the NC Board of Nursing, Koger Ctr., Camden Bldg., Suite 201, Raleigh, NC, (919) 782-3211.*

R*eason for Proposed Action:*

21 NCAC 32M .0006 and .0009- *Action is proposed to bring NC Nurse Practitioner Rules into conformity with national standards.*

C*omment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed before December 1, 1993 to the following address: NCBME, PO Box 26808, Raleigh, NC 27611-6808.*

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

SUBCHAPTER 32M - APPROVAL OF NURSE PRACTITIONERS

.0006 PRESCRIBING PRIVILEGES

(a) The NP Applicant and supervising physicians shall acknowledge in the application that they are familiar with laws and rules regarding prescribing; and shall agree to comply with these laws and rules by incorporating the laws and rules, including the Formulary, into their written standing orders protocols for each approved practice site.

(b) The generic categories listed in the Formulary are based of the "American Hospital Formulary Service" published by the American Society of Hospital Pharmacists. The Formulary is adopted by reference as a part of this Rule in accordance with provisions of G.S. 150B 14(e). Changes in the Formulary are approved by both the Board of Nursing and the Board of Medical Examiners.

(b)(e) The prescribing stipulations contained in these Rules and in the Formulary apply to writing prescriptions, ordering the administration of medications in out patient and in patient settings, and dispensing medications. Approval to dispense

must be obtained from the Board of Pharmacy.

(c)(d) Prescribing stipulations are as follows:

(1) Controlled Substances:

(1) Drugs and devices that may be prescribed by the NP in the approved practice site must be included in the written standing protocols as outlined in Rule .0009 (2) of this Section.

(2) (A) No controlled substances Controlled Substances (Schedules 2, 2N, 3, 3N, 4, 5) defined by the State and Federal Controlled Substances Acts may be prescribed, ordered, or dispensed as established in written standing protocols, provided all of the following restrictions are met:

(A) dosage units limited to a one week's supply;

(B) the prescription or order may not be refilled without a specific written or verbal order from the supervising physician; and

(B) Verbal orders given to the NP from the supervising physician for administration of a controlled substance to a specific patient may be entered into the patient chart by the NP just as an RN may transcribe a physician's verbal order into a patient chart.

(C) the NP has an assigned DEA number which is entered on each prescription for a controlled substance.

(2) Parenteral Medications No parenteral preparations may be prescribed, ordered, or dispensed unless under the order of the supervising physician as set forth in Subparagraph (3)(B) of this Rule with the exception of those medications listed on the Formulary as allowed.

(3) Excluded Drugs:

(A) Any pure form or combination of the generic classes of drugs listed in the Formulary may be prescribed, ordered, or dispensed, unless the drug or class of drug is excluded by the Formulary.

(B) The NP may prescribe an excluded a drug or class of drug not included in the site-specific written standing protocols only as follows:

(i) after the patient has been previously seen by the supervising physician for initial treatment of that illness and a written order has

been entered into the chart by the physician for future treatment by the NP; or

(A) upon a specific written or verbal order obtained from the supervising physician before the prescription or order is issued by the NP; and

(B) Such a prescription the verbal or order written order as described in Paragraph (d)(3)(B) Part (c)(3)(A) of this Rule must be signed by the NP with a notation that it is issued on the specific order of the supervising physician. (For example: Mary Smith, NP, on order of John Doe, M.D.)

(4) Refills A prescription may not indicate a refill, unless authorized by the supervising physician, with the exception of birth control medication which may be issued for a period not to exceed one year except for controlled substances which are excluded from refills.

(5) Dosage Units Amount of drug prescribed, ordered, or dispensed can be no more than 100 dosage units or a one month supply with the exception of birth control medications which may be issued for a period not to exceed one year.

(6) Prescription Notations — Every Each prescription must be noted on the patient's chart and include the following information: Subsequent prescriptions for the same medication may be authorized by the NP by telephone and must be entered on the patient's chart and co-signed by the supervising physician within the specified co-signing time contained in the approved application.

(A) medication dose;

(B) amount prescribed;

(C) directions for use;

(D) number of refills; and

(E) signature of NP.

(6) (7) Prescribing Number — A The prescribing number is assigned by the Board of Medical Examiners to an the NP upon approval. This number must appear on all prescriptions issued by the NP. The prescribing number is used as the NP's Approval Number.

(7) (8) Prescription Blank Format:

(A) All prescriptions issued by an the NP

- shall contain the supervising physician(s) name, the name of the patient, and the NP's name, telephone number of the supervising physician; the name, practice address, telephone number, and prescribing number of the NP, as well as all information required by law. A suggested prescription format is included in the application packet.
- (B) The NP's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Subparagraph (c)(2) of this Rule.
- (9) Pre-signed Prescription Blanks The supervising physician shall not leave pre-signed prescription forms for use by the NP.
- Authority 90-6; 90-18(14); 90-18.2; 90-171.23(14); 58 Fed. Reg. 31,171(1993) (to be codified at 21 C.F.R. 1301).*
- .0009 SUPERVISION OF NP**
- Supervision shall be provided by the responsible physician as follows:
- (1) Availability:
- (a) The supervising physician shall be continuously available for direct communications by radio, telephone, or telecommunications.
- (b) The supervising physician shall be available on a regularly scheduled basis for referrals of patients from the NP.
- (2) Written Standing Orders Protocols:
- (a) The supervising physician shall provide in each practice location written standing orders and drug protocols to cover most commonly encountered problems in the practice setting for use by the NP and for referral by other personnel in the setting.
- (a) Written standing protocols approved and signed by both the supervising physician(s) and the NP shall be maintained in each approved practice site;
- (b) The written standing protocols shall include the drugs, devices, medical treatments, tests and procedures that may be prescribed, ordered and implemented by the NP consistent with Rule .0006 of this Section, and which are appropriate for the diagnosis and treatment of the most commonly encountered health problems in that practice setting.
- (c) The written standing orders protocols shall include a pre-determined plan for emergency services.
- (d) The written standing protocols shall specify the process by which the NP shall refer a patient to another physician other than an approved supervising physician. only in accordance with written standing orders.
- (3) Countersigning of Medical Acts:
- (a) The maximum time interval between the NP's contact with the patient and chart review and countersigning of medical acts by the supervising physician is seven days.
- (b) Countersigning times previously approved by the Board remain in effect until a change is specifically applied for ~~an~~ and approved in accordance with Rule .0004 of this Section.
- (c) A longer countersigning time interval may be considered by the Joint Subcommittee upon specific request. The request should explain the practice circumstances which necessitate the longer countersigning interval.
- (d) All medical entries into the patient chart by an NP in all approved practice locations must be countersigned by the supervising physician, including medical progress notes; medical treatment rendered; tests or procedures ordered; and notations of prescriptions, orders, or drugs dispensed.
- (4) Supervision Distance:
- (a) If the NP is to perform duties away from the supervising physician, the application must clearly specify the circumstances and the supervisory arrangements established to protect the patient.
- (b) Details must be submitted describing distance, time, topography, physical characteristics, and communication ability between the NP and the supervising physician.
- (5) Supervising Physicians:
- (a) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, cannot be named as a

- supervising physician.
- (b) A physician in a graduate medical education program who is also practicing in a non-training situation may supervise a NP in the non-training situation if fully licensed.
- (c) All physicians who may supervise the NP in any manner must be approved in accordance with this Subchapter before NP supervision occurs.
- (6) The NP must be prepared to demonstrate upon request to a member of either the Board of Nursing or the Board of Medical Examiners, or one of its delegates, the ability to perform the medical acts assigned by the supervising physician.

Statutory Authority 90-6; 90-18(14); 90-18.2; 90-171.23(14).

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Mortuary Science intends to adopt rule cited as 21 NCAC 34B .0126; amend rules cited as 34B .0103, .0110, .0120 and 34D .0202.

The proposed effective date of this action is February 1, 1994.

The public hearing will be conducted at 10:00 a.m. on December 3, 1993 at the Board Room, 801 Hillsborough Street, Raleigh, NC 27603.

Reason for Proposed Action:

21 NCAC 34B .0103 - To permit trainees, under supervision, to engage in preneed funeral planning and to define supervision for all trainee activities.

21 NCAC 34B .0110 - To require trainee reports to include names of purchasers of preneed funeral contracts.

21 NCAC 34B .0120 - To require trainee affidavit to include number of preneed funeral contracts sold.

21 NCAC 34B .0126 - To require trainees in funeral directing and funeral service to gain experience in planning funerals as well as in post-planning activities.

21 NCAC 34D .0202(b) - To permit trainees, under supervision, to sell, but not sign, preneed

funeral contracts.

Comment Procedures: Interested persons may present statements, orally and in writing, at the public hearing and in writing prior to the hearing by mail addressed to the NC Board of Mortuary Science, Box 27368, Raleigh, NC 27611-7368.

CHAPTER 34 - BOARD OF MORTUARY SCIENCE

SUBCHAPTER 34B - FUNERAL SERVICE

SECTION .0100 - RESIDENT TRAINEES

.0103 AUTHORIZED PRACTICE: SUPERVISION

(a) Duly certified resident trainees in training for funeral service, duly certified resident trainees in training for funeral directing and duly certified resident trainees in training for embalming, while participating in learning experiences and while supervised by a person licensed by the Board as a funeral service licensee, funeral director or embalmer, respectively, may engage in the practice of funeral service, funeral directing or embalming embalming, respectively. When such person so licensed by the Board is not on the premises where the activities of the resident trainee are taking place, the resident trainee shall not be deemed to be supervised as required by this Rule.

(b) Duly certified resident trainees in training for funeral service or for funeral directing, while participating in learning experiences and while supervised by a person licensed by the Board as a preneed sales licensee, may engage in preneed funeral planning.

(c) When a resident trainee engages in funeral service, funeral directing, embalming or preneed funeral planning in or on the premises of a funeral home, the licensed supervisor shall be on the funeral home premises where and while such activities are performed. When a resident trainee engages in funeral service, funeral directing, embalming or preneed funeral planning off the funeral home premises, such activities shall be performed only in the presence of the licensed supervisor.

Statutory Authority G.S. 90-210.23(a); 90-210.25(a)(4); 90-210.67(a); 90-210.69(a).

.0110 REPORTS ON WORK

The resident trainee shall submit a report to the Board every three months on forms provided by the Board listing the work performed during the preceding three months. Such reports shall include the dates and a description of the work and must be certified as correct by the licensee under whom the trainee served during the period and by the manager of the funeral establishment. The names of the deceased persons persons, and the names of the purchasers of preneed funeral contracts, on whose cases the trainee worked and reported during traineeship must be retained by the trainee until his traineeship requirement has been fulfilled, and during such time such information shall be subject to inspection by the Board or its authorized agent. Such reports must be filed in the office of the Board not later than the 10th day of the calendar month which immediately follows the completion of each three-month period of resident traineeship. Failure to submit such reports when due shall be sufficient cause for suspension or revocation of the certificate of resident traineeship.

Statutory Authority G.S. 90-210.23(a), (d), (f); 90-210.25(a) (4e) (4g); 90-210.67(a); 90-210.69(a).

.0120 TRAINEE FINAL AFFIDAVIT FORM

Form BMS-10 is the resident trainee affidavit. It is used for certification by the supervising licensee that the trainee has served and performed certain work under him as required by G.S. 90-210.25(a)(4). It contains space for the names of the licensee and the trainee; dates and places of service; and the number of funerals funerals, preneed funeral contracts or and embalmings, or both, embalmings that the trainee has assisted in during traineeship. The form is filed with the Board upon ending resident traineeship with a licensed supervisor.

Statutory Authority G.S. 90-210.23(a), (d), (f); 90-210.25(a) (4f); 90-210.67(a); 90-210.69(a).

.0126 FUNERAL DIRECTING AND FUNERAL SERVICE TRAINING

To fulfill the requirements that funeral director and funeral service trainees shall assist in directing at least 25 funerals during resident traineeship, such trainees shall, under supervision, perform all of the components of "funeral directing," as defined in G.S. 90-210.20(f); and to achieve this end such trainees shall perform, in at least 25 cases, the activities of selling and arranging

(whether performed at time of need or by selling preneed funeral contracts or a combination) and, in at least 25 cases, activities pertaining to the funeral ceremony and disposition of the body.

Statutory Authority G.S. 90-210.20(f); 90-210.23(a), (d), (f); 90-210.25(a)(4); 90-210.67(a); 90-210.69(a).

SUBCHAPTER 34D - PRENEED FUNERAL CONTRACTS

SECTION .0200 - LICENSING

.0202 PRENEED SALES LICENSE

(a) Subject to G.S. 90-210.69(c), holding a funeral director's license, issued by the Board, or a funeral service license, issued by the Board, is the qualification to be eligible for a preneed sales license.

(b) The preneed sales licensee may engage, under the preneed sales license, in the following preneed funeral planning activities, pursuant to the definition of "preneed funeral planning" in G.S. 90-210.60(8):

- (1) show and explain written materials, including price lists and photographs, descriptive of the funeral services and merchandise and the preneed funeral plan or contract being offered;
- (2) explain the various types of funeral ceremonies and services and the qualities and characteristics of various kinds of funeral merchandise;
- (3) sell, on a preneed basis, funeral services and merchandise;
- (4) record, on any form or otherwise, specific items of funeral services and merchandise selected on a preneed basis;
- (5) make funeral arrangements on a preneed basis; and
- (6) sign preneed contracts.

No preneed funeral planning activities shall be engaged in by anyone other than a preneed sales licensee; licensee or a registered resident trainee in funeral directing or funeral service who is acting under the supervision of a preneed sales licensee as provided in 21 NCAC 34B .0103; provided, however, no resident trainee shall, as seller or seller's agent, sign a preneed funeral contract; and provided, however, provided further, no preneed sales license is required for solely the sale of an insurance policy, and in connection with such a sale, the salesperson shall not be deemed to have

engaged in preneed funeral planning if, for the sole purpose of permitting a prospective purchaser to make an informed decision as to the amount of insurance desired, the salesperson shows only price lists of funeral services and merchandise.

(c) A licensed funeral director or funeral service licensee wishing to apply for a preneed sales license shall submit to the Board the applicant's name, address, telephone number, funeral director's or funeral service license number, name and address of the preneed funeral establishment licensee or licensees on whose behalf the applicant will sell preneed funeral contracts, and the applicant's employment or agency relationship with the licensee or licensees. If the applicant proposes to sell on behalf of more than one preneed funeral establishment licensee, the applicant shall disclose information to satisfy the requirement of G.S. 90-210.67(a) that the preneed funeral establishment licensees be related by ownership or contract.

(d) The Board shall issue to each preneed sales licensee a pocket card as certification of the preneed sales license. The preneed sales licensee shall carry the card while engaging in preneed funeral planning. The card shall indicate the names of the preneed funeral establishment licensees on whose behalf the preneed sales licensee is authorized to sell preneed funeral contracts, and if there is any change in the list of establishments on whose behalf the preneed sales licensee is authorized to sell, the preneed sales licensee shall make a new application for a preneed sales license and shall pay the application fee.

(e) The preneed sales licensee shall sign and affix his or her preneed sales license number to each preneed funeral contract, which he or she sells, in the presence of the purchaser of the contract at the time of sale.

Statutory Authority G.S. 90-210.25(a)(4); 90-210.67(a), (c); 90-210.69(a).

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend rules cited as 21 NCAC 36 .0203, .0211, .0213, .0218 and .0221.

The proposed effective date of this action is February 1, 1994.

The public hearing will be conducted at 1:00 p.m. on December 9, 1993 at the North Carolina Board of Nursing Office, 3724 National Drive, Suite 201, Raleigh, NC 27612.

***R*Reason for Proposed Action:**

- 21 NCAC 36 .0203 - To be consistent with the G.S. 90-171.35 changes effective June 30, 1993.***
- 21 NCAC 36 .0211 - To be consistent with the G.S. 90-171-.30 changes effective June 30, 1993.***
- 21 NCAC 36 .0213 - To be consistent with the G.S. 90-171.31 changes effective June 30, 1993.***
- 21 NCAC 36 .0218 - To be consistent with the G.S. 90-171.33 changes effective June 30, 1993.***
- 21 NCAC 36 .0221 - To permit legal practice of nursing for out-of-state students engaged in clinical experiences in North Carolina.***

***C*Comment Procedures: Any person wishing to present oral testimony relevant to proposed rules may register at the door before the hearing begins and present hearing officer with a written copy of testimony. Written comments concerning these rules must be submitted by December 9, 1993, to Jean Stanley, CPS, APA Coordinator, North Carolina Board of Nursing, P.O. Box 2129, Raleigh, N.C., 27602-2129.**

**CHAPTER 36 - BOARD
OF NURSING**

SECTION .0200 - LICENSURE

**.0203 REINSTATEMENT OF LAPSED
LICENSE**

(a) The registrant whose license has lapsed and who desires reinstatement of that license will:

- (1) furnish information required on forms provided by the Board;
- (2) provide a statement of the reason for failure to apply for renewal prior to the deadline;
- (3) submit evidence of unencumbered license in all jurisdictions in which a license is or has ever been held;
- (4) submit evidence of completion of all court conditions resulting from any misdemeanor or felony conviction(s);
- (5) submit such other evidence that the Board may require to determine whether the license should be reinstated; and
- (6) submit payment of reinstatement and renewal fee.

- (b) The registrant whose license has lapsed for a period of five years or more will also submit:
- (1) evidence of mental and physical health necessary to competently practice nursing;
 - (2) evidence of satisfactory completion of a Board-approved refresher course or proof of active licensure within the past five years in another jurisdiction; and
 - (3) a recent photograph for identification purposes, if deemed necessary.
- (c) If a refresher course is required, the registrant must apply for reinstatement of the license within one year of completing the refresher course in order to receive a current license. The application for reinstatement must include verification from the provider of the refresher course that the registrant has satisfactorily met both theory and clinical objectives and is deemed competent to practice nursing at the appropriate level of licensure.
- (d) The Board may decline to reinstate a license if it is not satisfied as to the applicant's ability to practice nursing, or it may issue a license for a restricted period of time.

Statutory Authority G.S. 90-171.23(b); 90-171.35; 90-171.37.

.0211 EXAMINATION

(a) An applicant meets the educational qualifications to write the examination for licensure to practice as a registered nurse by:

- (1) graduating from a board approved nursing program designed to prepare a person for registered nurse licensure;
~~(A) applicants graduating before July 1, 1981 have no time restrictions on writing the examination;~~
~~(B) applicants graduating after July 1, 1981 must write the examination within three years of graduation.~~
- (2) graduating from a nursing program outside the United States or Canada that is designed to prepare provide graduates for the equivalent of with comparable preparation for licensure as a registered nurse, and submitting the certificate issued by the Commission on Graduates of Foreign Nursing Schools as evidence of the required educational qualifications.

(b) An applicant meets the educational qualifications to write the examination for licensure to practice as a licensed practical nurse by:

- (1) graduating from a Board approved nursing program designed to prepare a person for practical nurse licensure;
~~(A) applicants graduating before July 1, 1981 have no time restrictions on writing the examination; and~~
~~(B) applicants graduating after July 1, 1981 must write the examination within three years of graduation.~~
- (2) graduating from a nursing program outside the United States or Canada that is designed to prepare provide graduates for the equivalent of with comparable preparation for licensure as a licensed practical nurse, and submitting evidence from a Board approved evaluation agency of the required educational qualifications and evidence of English proficiency from a Board approved agency or service;
- (3) graduating ~~within the past three years~~ from a Board approved nursing program designed to prepare graduates for registered nurse licensure, and failing to pass the examination for registered nurse licensure;
- (4) graduating from a nursing program outside the United States and Canada that is designed to prepare graduates for registered nurse licensure, submitting evidence of English proficiency from a Board approved agency or service, and failing to pass the examination for registered nurse licensure in any jurisdiction ~~within the past three years~~; or
~~(5) completing a Board approved course of study such as offered by the U.S. Navy military service branches for Hospital Corpsman. Applicants must write the examination ~~within three years of completing active duty/selected reserve duty as a military Hospital Corpsman~~. The Board approved course of study includes:~~
- (A) a course equivalent to the U.S. Navy Hospital Corpsman Basic (Class "A") course;
- (B) Advancement Examination for Navy Hospital Corpsman Third Class or an equivalent examination;
- (C) college level human lifespan growth and development course; and
- (D) a nursing course provided by the Navy or another approved agency that includes maternal-child nursing theory

and clinical, the legal role of the LPN, the nursing process, and nutrition.

(c) An application to the Board of Nursing for examination shall be submitted at least 60 days prior to the examination. Pursuant to The Americans with Disabilities Act and guidelines established by the National Council of State Boards of Nursing, Inc., the Board cannot accept applications received after the established deadline date. An admission card with specific information as to time, date, and place of examination will be mailed to the applicant approximately 14 days prior to the date of the examination.

(d) The examinations for licensure developed by the National Council of State Boards of Nursing, Inc. shall be the examinations for licensure as a registered nurse or as a licensed practical nurse in North Carolina.

(1) These examinations shall be administered in accordance with the contract between the Board of Nursing and the National Council of State Boards of Nursing, Inc.

(2) The ~~examination examinations~~ for licensure as a registered nurse shall be administered in February and July on dates determined by the National Council of State Boards of Nursing, Inc at least twice a year.

(3) The examination for licensure as a licensed practical nurse shall be administered in April and October on dates determined by the National Council of State Boards of Nursing, Inc.

(43) Scores on the examination shall be reported, by mail only, to the individual applicant and to the director of the program from which the applicant was graduated. Aggregate results from the examination(s) may be published by the Board.

(54) The passing standard score for each of the five tests comprising the examination for registered nurse licensure, up to and including the February 1982 examination is was 350. For the examination offered in July 1982 and through July 1988, the passing score is was 1600. Beginning February 1989, the ~~passing score results~~ for registered nurse licensure is reported as "PASS" or "FAIL".

(65) The passing score for the examination

for practical nurse licensure, up to and including the April 1988 is was 350. Beginning October 1988, the ~~passing score results~~ for practical nurse licensure is reported as "PASS" or "FAIL".

(e) Applicants who meet the qualifications for licensure will be issued a certificate of registration and a license to practice nursing for the remainder of the year.

(f) Applicants for a North Carolina license may take the examination for licensure developed by the National Council of State Boards of Nursing, Inc. in another jurisdiction of the United States, providing:

- (1) the Board of Nursing in that jurisdiction consents to proctor the applicant;
- (2) arrangements are made through the North Carolina Board of Nursing sufficiently in advance of the examination date to meet application requirements in both jurisdictions; and
- (3) the applicant pays any service fee charged by the proctoring Board.

(g) The North Carolina Board of Nursing may proctor an examination upon request of another state Board of Nursing at the regularly scheduled examination sessions if space is available. The applicant shall submit a service fee for such proctoring.

Statutory Authority G.S. 90-171.23(15), 90-171.29; 90-171.30.

.0213 REEXAMINATION

(a) An applicant who fails an examination and is eligible to take a subsequent examination must submit a completed application and the current examination fee by the published deadline date for that examination session. That applicant is not considered a first-time writer of the examination.

(b) An applicant who was graduated after July 1, 1981, and does not pass an examination within three years of graduation must after that three year period establish eligibility to take an examination. An applicant establishes this eligibility by successfully completing a Board approved nursing program and by the applicant or the faculty of the program submitting evidence of the applicant's classroom and clinical competencies. When an applicant establishes eligibility to take an examination, the applicant may take subsequent examinations for a period of three years. If the applicant does not pass within that three years, the applicant must again establish eligibility.

(e) A Board approved nursing program that establishes eligibility for an applicant to take an examination is one:

- (1) that is offered by or in conjunction with an existing nursing program approved by the Board and has a curriculum designed to prepare graduates for registered nurse licensure, practical nurse licensure, or both, as described in Rule .0300;
- (2) whose objectives and competencies are in accord with outcomes expected of an individual in nursing practice as legally defined for the appropriate licensure level; and
- (3) whose purposes, policies, objectives, and competencies have been submitted to, and approved by, the Board prior to the enrollment of applicants.

(d) An applicant who establishes eligibility to take an examination by successfully completing a Board approved nursing program is eligible for a Status A temporary license. Eligibility for a Status A license is restricted to once every three years.

(e) An applicant who fails an examination and whose eligibility to take subsequent examinations has not expired may enroll with student status, as specified in G.S. 90-171.43(2), in a Board approved nursing program designed to enhance the acquisition and application of nursing knowledge and skills. This Board approved nursing program is one:

- (1) offered by or in conjunction with an existing nursing program approved to prepare individuals for licensure; and
- (2) whose purposes, objectives, competencies, and teaching and learning activities have been submitted to, and approved by, the Board to include those components legally defined for the licensure level.

(f) Any program as defined in (e) and (e) of this Rule must have established mechanisms for supervision of learning experiences, evaluation of program effectiveness, and assurance of adequate resources to support the program objectives.

Statutory Authority G.S. 90-171.31; 90-171.33; 90-171.38.

.0218 LICENSURE WITHOUT EXAMINATION (BY ENDORSEMENT)

(a) The Board will provide an application form which the applicant who wishes to apply for

licensure without examination (by endorsement) must complete in its entirety.

- (1) The applicant for licensure by endorsement as a registered nurse is required to show evidence of:
 - (A) completion of a nursing program approved by the jurisdiction of original licensure;
 - (B) attainment of a standard score equal to or exceeding 350 on each test in the State Board Test Pool Examination administered prior to July 1982; or a standard score of 1600 on the licensing examination developed by the National Council of State Boards of Nursing, Inc. beginning in July 1982 and up to and including the July 1988 examination; or beginning in February 1989, a score result of "PASS". An exception to this requirement is made for the applicant who was registered in the original state prior to April 1964. Such applicant must have attained the score, on each test in the series, which was required by the state issuing the original certificate of registration;
 - (C) mental and physical health necessary to competently practice nursing;
 - (D) unencumbered license in all jurisdictions in which a license is or has ever been held; if the license in the other jurisdiction has been inactive or lapsed for five or more years, the applicant will be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and 90-171.36; and
 - (E) completion of all court conditions resulting from any misdemeanor or felony conviction(s).
- (2) The applicant for licensure by endorsement as a licensed practical nurse is required to show evidence of:
 - (A) completion of:
 - (i) a program in practical nursing approved by the jurisdiction of original licensure; or
 - (ii) course(s) of study within an approved program(s) which is (are) comparable to that required of practical nurse graduates in North Carolina; or
 - (iii) approved course of study for

military hospital corpsman which is (are) comparable to that required of practical nurse graduates in North Carolina.

The applicant who was graduated prior to July 1956 will be considered on an individual basis in light of licensure requirements in North Carolina at the time of original licensure;

- (B) achievement of a passing score on the State Board Test Pool Examination or the licensing examination developed by the National Council of State Boards of Nursing, Inc. If originally licensed on or after September 1, 1957, and up to and including the April 1988 examination, an applicant for a North Carolina license as a practical nurse on the basis of examination in another state must have attained a standard score equal to or exceeding 350 on the licensure examination. Beginning in October 1988, an applicant must have received a score result of "PASS" on the licensure examination. The applicant who was licensed prior to September 1, 1957 in the original jurisdiction ~~will be considered on an individual basis in light of the licensure requirements in North Carolina at the time of original licensure must have attained the score which was required by the jurisdiction issuing the original certificate of registration~~;
- (C) mental and physical health necessary to competently practice nursing;
- (D) unencumbered license in all jurisdictions in which a license is or has ever been held; if the license in the other jurisdiction has been inactive or lapsed for five or more years, the applicant will be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and 90-171.36; and
- (E) completion of all court conditions resulting from any misdemeanor or felony conviction(s).

(b) The North Carolina Board of Nursing will require applicants for licensure by endorsement to provide proof of secondary education achievement only if deemed necessary for identification, or other just cause.

(c) Graduates of Canadian nursing programs

who have been licensed in Canada on the basis of the Canadian Nurses' Association Test Service Examination (CNATS) written in the English language are eligible to apply for registration by endorsement provided the applicant has not failed the examination developed by the National Council of State Boards of Nursing, Inc. in North Carolina.

(d) A nurse educated and licensed outside the United States of America is eligible for North Carolina licensure by endorsement if the nurse has:

- (1) proof of education as required by the Board or a certificate issued by the Commission on Graduates of Foreign Nursing Schools; and
- (2) proof of passing the licensing examination developed by the National Council of State Boards of Nursing, Inc. in another jurisdiction. An exception to this requirement is made for the applicant who was registered by Canadian province examination written in the English language prior to CNATS or SBTPE, and has worked in nursing within the past five years or has completed a Board-approved refresher course.

(e) When completed application, evidence of current license in another jurisdiction, and fee are received in the Board office, a temporary license is issued to the applicant. Employer references may be requested to validate competent behavior to practice nursing.

(f) Facts provided by the applicant and the Board of Nursing of original licensure are compared to confirm the identity and validity of the applicant's credentials. Status in other states of current licensure is verified. When eligibility is determined, a certificate of registration and a current license for the remainder of the calendar year are issued.

Statutory Authority G.S. 90-171.23(b); 90-171.33; 90-171.37.

.0221 LICENSE REQUIRED

(a) No cap, pin, uniform, insignia or title shall be used to represent to the public that an unlicensed person is a registered nurse or a licensed practical nurse.

(b) A license to practice nursing is not required for the repetitive performance of a common task or procedure which does not require the professional judgment of a registered nurse or licensed practical

nurse. and which Tasks may be delegated to an unlicensed person which:

- (1) is delegated by a licensed physician, licensed dentist or licensed nurse;
- (21) frequently recurs recur in the daily care of a client or group of clients;
- (32) is are performed according to an established sequence of steps;
- (43) involves involve little or no modification from one client-care situation to another;
- (54) may be performed with a predictable outcome; and
- (65) does do not inherently involve ongoing assessments assessment, interpretations interpretation, or decision-making which cannot be logically separated from the procedure procedure(s) itself.

Client-care services which do not meet all of these criteria must be performed by a duly licensed nurse. The restrictions, however, do not apply to care performed by clients themselves, their families or significant others, or by caretakers who provide personal care to individuals whose health care needs are incidental to the personal care required.

(c) A license to practice nursing is required for implementing any treatment and pharmaceutical regimen which is likely to produce side or toxic effects, allergic reactions, or other unusual effects or which may rapidly endanger a client's life or well-being and which is prescribed by a person authorized by state law to prescribe such a regimen.

- (1) The nurse who assumes responsibility for implementing a treatment and pharmaceutical regimen is accountable for:
 - (A) recognizing side effects;
 - (B) recognizing toxic effects;
 - (C) recognizing allergic reactions;
 - (D) recognizing immediate desired effects;
 - (E) recognizing unusual and unexpected effects;
 - (F) recognizing changes in client's condition that contraindicates continued administration of the medication;
 - (G) anticipating those effects which may rapidly endanger a client's life or well-being; and
 - (H) making judgments and decisions concerning actions to take in the event such untoward effects occur.
- (2) Exceptions to .0221(c)(1) are:

- (A) persons who hold statutory authority to administer medications;
- (B) clients themselves, their families or significant others, or caretakers who provide personal care to individuals whose health care needs are incidental to the personal care required;
- (C) administration of oral nutritional supplements;
- (D) applications of non-systemic, topical skin preparations which have local effects only provided that ongoing, periodic assessment of any skin lesion present is carried out by a person licensed to make such assessments; and
- (E) administration of commonly used cleansing enema solutions or suppositories with local effects only.

(d) Unlicensed nursing students enrolled in out-of-state nursing education programs who are requesting utilization of North Carolina clinical facilities, shall be allowed such experiences following approval by the Board of Nursing or its designee. Upon receiving such a request, the chief nurse administrator of a North Carolina clinical facility contacted by an out-of-state nursing education program seeking nursing student clinical education experiences in North Carolina shall provide the Board with the following at least 60 days prior to the start of the requested experience prior to receiving approval for accepting the students:

- (1) letter of request for approval to provide the clinical offering;
- (2) course description, which includes course objectives, content outline, grading criteria for the course, and curriculum pattern which lists all courses required and placement of this course in the curriculum;
- (3) names of faculty members responsible for coordinating the student's experiences;
- (4) documentation that the nursing program is currently approved by the Board of Nursing or other appropriate approval bodies in the state in which the parent institution is located;
- (5) proposed starting and completion dates for the requested clinical experiences;
- (6) criteria used for selection of the students for the clinical experience in North Carolina;
- (7) number of students to be placed in the

PROPOSED RULES

- (8) facility;
- (9) units for placement and number of students on each unit;
- (10) RN faculty or preceptor qualification criteria with vitae, including NC RN license numbers of those working with the students;
- (11) signed contract between nursing program and clinical facility indicating ratio will not be greater than 1:10 faculty to student ratio for groups of students or 1:2 preceptor to student if preceptor arrangement is proposed;
- (12) written statement from chief nursing administrator indicating the proposed clinical experience does not conflict with clinical unit commitment to approved North Carolina nursing programs who have contracts with the facility;
- (13) evidence that all students involved in the proposed clinical experience are in good academic standing; and
- (e) If the approved experience is to continue on an annual basis, written notification shall be submitted annually, by the chief nurse administrator of the NC facility at least thirty days prior to the resumption of the experiences. This notice shall include notification of any changes in the information submitted in material required in Paragraph (d) of this Rule. Upon review by the Board or its designee, written approval shall be sent to the Chief Nurse administrator of the NC facility and the out-of-state nursing program, within thirty business days of receipt of the materials in the Board office. Copies of the following shall be distributed by the chief nursing administrator of the clinical facility to all students and faculty involved in the clinical experiences:
 - (1) North Carolina Nursing Practice Act;
 - (2) North Carolina administrative rules and related interpretations regarding the role of the RN, LPN, and unlicensed nursing personnel;
 - (3) North Carolina Board developed Guidelines for Utilization of Preceptors; and
 - (4) North Carolina Board of Nursing developed Interpretations According to Adopted Categories.

(f) Failure to comply with the requirements in Paragraph (d) of this Rule as established by the North Carolina Board of Nursing shall result in the immediate withdrawal of the Board's approval of the clinical offerings.

Statutory Authority G.S. 90-171.23(b); 90-171.39; 90-171.43.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Occupational Therapy intends to adopt rules cited as 21 NCAC 38 .0701 - .0706; amend rules .0102, .0204, .0613; repeal rules .0306 and .0307.

The proposed effective date of this action is February 1, 1994.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Requests for a Public Hearing must be submitted in writing by November 15, 1993 to: Charles P. Wilkins, Legal Counsel to the NCBOT, P.O. Box 2280, Raleigh, N.C. 27602.

Reason for Proposed Action:

21 NCAC 38 .0701 - .0706 - to reflect an amendment to G.S. 55B-2(6) which allows occupational therapists to enter into professional corporations.
21 NCAC 38 .0102 - to reflect the relocation of the administrative offices of the Board.
21 NCAC 38 .0204 - to increase the late renewal fee from twenty-five dollars (\$25.00) to fifty dollars (\$50.00).

21 NCAC 38 .0613 - to clarify the procedure for judicial review of a final agency decision.
21 NCAC 38 .0306 and .0307 - repeal rules due to an amendment to G.S. 55B-2(6) which allows occupational therapists to enter into professional corporations.

Comment Procedures: Comments concerning these rules must be submitted in writing by December 1, 1993 to: Charles P. Wilkins, Legal Counsel to the NCBOT, P.O. Box 2280, Raleigh, N.C. 27602.

CHAPTER 38 - BOARD OF OCCUPATIONAL THERAPISTS

**SECTION .0100 - ORGANIZATION
AND GENERAL PROVISIONS**

.0102 BOARD OFFICE

The administrative offices of the North Carolina Board of Occupational Therapy are located at:
Suite 1921, Center Plaza Building
411 Fayetteville Street Mall
Suite 2220, First Union Capitol Center
150 Fayetteville Street Mall
P.O. Box 2280
Raleigh, North Carolina 27602
Telephone: (919) 832-1380

Office hours are 9:00 a.m. until 5:00 p.m., Monday through Friday, except holidays.

Statutory Authority G.S. 90-270.68.

**SECTION .0200 - APPLICATION
FOR LICENSE**

.0204 FEES

(a) Fees are as follows:

- (1) a request for an initial application for licensure as an occupational therapist, an occupational therapist assistant, or a provisional licensee is ten dollars (\$10.00);
 - (2) consideration of the application for issuance of a license or re-issuance of an expired license is one hundred dollars (\$100.00);
 - (3) annual renewal of a license is fifty dollars (\$50.00);
 - (4) late renewal of a license is an additional twenty five dollars (\$25.00); fifty dollars (\$50.00);
 - (5) issuance of a provisional license is thirty-five dollars (\$35.00).
- (b) Fees shall be nonrefundable and shall be paid in the form of a cashier's check, certified check or money order made payable to the North Carolina Board of Occupational Therapy. However, personal checks may be accepted for payment of renewal fees.

Statutory Authority G.S. 90-270.77.

SECTION .0300 - LICENSING

.0306 PROFESSIONAL CORPORATION

~~Occupational therapists may not incorporate under the Professional Corporation Act, G.S. 55B.~~

Statutory Authority G.S. 55B-2.

**.0307 RENEWAL OF CERTIFICATE
OF REGISTRATION**

~~Occupational therapists are not required to obtain or renew a Certificate of Registration under the Professional Corporation Act, G.S. 55B.~~

Statutory Authority G.S. 55B-2.

**SECTION .0600 - ADMINISTRATIVE
HEARING PROCEDURES**

.0613 FINAL DECISION

In all cases heard by the Board, the Board will issue its decision within 60 days after its next regularly scheduled meeting following the close of the hearing. The decision will be the prerequisite "final agency decision" for the right to judicial review. ~~To obtain judicial review, the person seeking review must file a petition with the court in accordance with the provisions of G.S. 150B-45.~~

Statutory Authority G.S. 150B-45.

**SECTION .0700 - PROFESSIONAL
CORPORATIONS**

.0701 AUTHORITY AND DEFINITIONS

(a) ~~Under the Professional Corporation Act, G.S. 55B, the North Carolina Board of Occupational Therapy has the authority to regulate professional corporations whose purpose is the provision of occupational therapy related services.~~

(b) ~~The rules in this Section supplement the basic statutory governing professional corporations and shall be interpreted so as not to conflict with such statutory law, as it may be amended from time to time, or with other statutes and laws governing corporations generally.~~

(c) ~~"Board" means the North Carolina Board of Occupational Therapy.~~

(d) ~~"Occupational therapy related services" means those activities through which occupational therapy, as defined in G.S. 90-270.67(4), is practiced.~~

(e) ~~"Licensee" means any individual who is duly licensed to practice occupational therapy in North Carolina as a registered occupational therapist.~~

(f) ~~"Professional Corporation" means professional corporations organized for the purpose of providing occupational therapy related services in North Carolina.~~

(g) ~~"Legal Counsel" means the legal counsel to~~

the North Carolina Board of Occupational Therapy.

(h) "Assistant" means the administrative assistant to the North Carolina Board of Occupational Therapy.

Statutory Authority G.S. 55B-2; 55B-12; 90-170.67.

.0702 PREREQUISITES FOR INCORPORATION

The following requirements must be met in order to incorporate:

- (1) The incorporator, whether one or more, of a professional corporation shall be duly licensed to practice occupational therapy in North Carolina as a registered occupational therapist.
- (2) Before the filing of the articles of incorporation with the Secretary of State, the incorporators shall file with the assistant to the Board a copy of the original articles of incorporation, together with a registration fee of fifty dollars (\$50.00). The copy of the articles of incorporation shall be accompanied by an application to the Board (Corp. Form 01) certified by all incorporators, setting forth the names, addresses and N.C. license numbers of each shareholder of said corporation who will be practicing occupational therapy for said corporation.
- (3) Included with the above shall be a statement that all such persons are duly licensed to practice occupational therapy in North Carolina as registered occupational therapists, and stating that the corporation will be conducted in compliance with the Professional Corporation Act and these Regulations.
- (4) If the articles are changed in any manner before being filed with the Secretary of State, they shall be re-submitted to the assistant to the Board and shall not be filed until approved by the assistant to the Board.

Statutory Authority G.S. 55B-4; G.S. 55B-10; 90-170.67(5).

.0703 CERTIFICATE OF REGISTRATION

The Certificate of Registration shall be issued as follows:

- (1) The legal counsel or assistant shall issue a Certificate of Registration (Corp. Form

02) for the professional corporation to become effective only when the professional corporation files the articles of incorporation with the Secretary of State and if:

- (a) the legal counsel or assistant to the Board finds that no disciplinary action is pending before the Board against any of the licensed incorporators or persons who will be directors, officers, or shareholders of such corporation; and
- (b) it appears to the legal counsel or assistant that such corporation will be conducted in compliance with the law and regulations.
- (2) The proposed original articles of incorporation, and the Certificate of Registration, will be returned to the incorporators for filing with the Secretary of State. The copy of the articles and a copy of the certification will be retained in the administrative offices of the Board. If the required findings cannot be made, the registration fee shall be refunded to the incorporators.
- (3) The initial Certificate of Registration shall remain in effect until June 30 of the year in which it was issued unless suspended or terminated as provided by law. The Certificate of Registration shall be renewed annually thereafter.
- (4) At least 20 days prior to the date of expiration of the certificate, the corporation shall submit its written application for renewal upon a form as provided by the Board (Corp. Form 03), said application to be accompanied by check in the amount of twenty-five dollars (\$25.00) in payment of the renewal fee. The Board shall renew the certificate provided that the Board finds that the corporation has followed the law and the regulations of the Board.
- (5) If the corporation does not apply for renewal of its Certificate of Registration within 30 days after the date of its expiration, the Certificate of Registration shall be automatically suspended. Upon suspension of the Certificate of Registration, the legal counsel or the assistant to the Board will notify the Secretary of State in writing.
- (6) The Certificate of Registration may be reinstated within the calendar year upon payment of the renewal fee plus a penalty

of ten dollars (\$10.00), if such corporation is then otherwise qualified and entitled to a renewal of its Certificate of Registration.

Statutory Authority G.S. 55b-12; 90-170.67(5).

.0704 GENERAL AND ADMINISTRATIVE PROVISIONS

The following general provisions shall apply to all incorporating professional associations:

- (1) If the legal counsel or assistant should decline to issue a Certificate of Registration required by 21 NCAC 38 .0703(1), or decline to renew the same when properly requested, or shall refuse to take any other action required of him/her in writing by a professional corporation, the aggrieved party may request, in writing, a review of such action by the Board, and the Board shall provide a formal hearing for such aggrieved party before a majority of the Board.
- (2) All amendments to charters of professional corporations, all merger and consolidation agreements to which a professional corporation is a party, and all dissolution proceedings and similar changes in the corporate structure of a professional corporation shall be filed with the legal counsel or assistant to the Board for approval before being filed with the Secretary of State.
- (3) The legal counsel or assistant is authorized to issue the certificate (Corp. Form 04) required by G.S. 55B-6 when stock is transferred in a professional corporation, and such certificate shall be permanently attached to the stub of the transferee's certificate in the stock book of the professional corporation.

Statutory Authority G.S. 55B-6; 90.170.67(5).

.0705 FORMS

The following forms may be secured from the office of the Board regarding professional corporations:

- (1) Regulations adopted by the Board relating to Professional Corporations whose purpose is providing occupational therapy related services;
- (2) Corp. Form 01 - Certificate of Incorporator(s) and Application for a Certificate of

- Registration for a Professional Corporation;
- (3) Corp. Form 02 - Certificate of Registration of a Professional Corporation for the Purpose of Providing Occupational Therapy Related Services;
- (4) Corp. Form 03 - Application for Renewal of Certificate of Registration; and
- (5) Corp. Form 04 - Certificate Authorizing Transfer of Stock in Professional Corporation Organized to Provide Occupational Therapy Related Services.

Statutory Authority G.S. 55B-12; 90-170.67(5).

.0706 FEES

- (a) Initial issuance of a Certificate of Registration requires a fee of fifty dollars (\$50.00).
- (b) Renewal of a Certificate of Registration requires a fee of twenty-five dollars (\$25.00).
- (c) Late renewal of a Certificate of Registration requires an additional fee of ten dollars (\$10.00).

Statutory Authority G.S. 55B-10; 55B-11; 55B-12.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of State Personnel/State Personnel Commission intends to amend rules cited as 25 NCAC 1D .0205, .0211, .0212, .0401, .0403, .0405, .0504, .0510, .0512, .0611, .1928; 1H .0624, .0625, .0628; 1J .0603, .0604, .0608.

The proposed effective date of this action is February 1, 1994.

The public hearing will be conducted at 9:00 a.m. on December 8, 1993 at the Personnel Development Center, 101 Peace Street, Raleigh, North Carolina.

Reason for Proposed Action:

- 25 NCAC 1D .0205, .0211, .0212, .0401, .0403, .0405, .0504, .0510, .0512, .0611, .1928 - Clarifies the definition of "demotion/ reassignment", changes "permanent" to "career" employee and G.S. 126-39 to G.S. 126-1A to conform to the changes in Senate Bill 122.
- 25 NCAC 1H .0624, .0625, .0628 - Change "permanent" to "career" and G.S. 126-39 to G.S.

126-1A to conform to the changes in Senate Bill 122.

25 NCAC 1J .0603, .0604, .0608 - To conform to Senate Bill 122 which re-defines permanent state employee to career state employee.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to: Barbara A. Coward, Office of State Personnel, 116 W. Jones Street, Raleigh, NC 27603.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1D - COMPENSATION

SECTION .0200 - NEW APPOINTMENTS

.0205 EFFECTIVE DATE

(a) A new employee may begin work on any scheduled workday in a pay period. When the first day of a pay period falls on a non-workday and the employee begins work on the first workday of a pay period, the date to begin work will be shown as the first of the pay period.

(b) The effective date for change to permanent status shall be the date that it is determined that the employee meets acceptable performance standards, but not less than three months from the date of employment.

Statutory Authority G.S. 126-4.

.0211 SALARY RATE

(a) The hiring rate of pay for a class, or trainee rate where applicable, shall normally be paid a qualified new employee. When a special entry rate has been authorized, that rate may be paid a qualified new employee if the agency has made a decision to use the new rate.

(b) It is intended that agencies make as few appointments above the hiring rate (or applicable special entry rate) as possible. Rates A salary above this the hiring rate (or applicable special entry rate) may be requested on the initial appointment or at the time the appointment is made permanent, but not to exceed the maximum salary published in the vacancy announcement, when:

- (1) extensive recruitment efforts have not produced qualified applicants; or
- (2) the applicant possesses exceptional qualifications above the hiring require-

ments of the class specification, and operational needs exist which justify filling the position at the salary above the minimum of the range. The additional experience and training must be in the same or closely related area to that stated as acceptable in the class specification. Generally, up to five percent above the minimum rate may be considered for each qualifying year of directly related experience and/or education above the minimum requirements ~~not to exceed the midpoint of the range without prior approval of the State Personnel Director.~~

(c) Appointments above the hiring rate are to be avoided if salary inequities would be created. This should be considered very carefully in order to avoid present or future inequities. ~~One consideration must be the policy which would apply if a current employee were promoted to a vacancy. A serious inequity can occur if a new employee is paid at a rate higher than that which would be paid if a current employee were promoted to the same position.~~

(d) When an employee is given a permanent appointment status after successful completion of either the probationary period or the trainee period, if the initial salary is at the hiring rate or trainee rate, the employee's salary it shall be increased to the minimum rate of the range (unless appointment was made at or above this level) and may be increased to a higher rate if conditions justify. The effective date for change to permanent status must be the first day of a pay period. If the employee is in pay status for at least one half of the workdays and holidays in the pay period, credit will be given for the full pay period.

(e) If the employee salary is hired initially at an authorized special entry rate, the employee's salary it may be increased by five percent above the special entry rate upon successful completion of the probationary period.

(f) If the employee is hired at a salary below an authorized special entry rate because the lower salary is sufficient to attract applicants but not sufficient to retain the employee once experience is gained, an adjustment up to the special entry rate may be made during or at the end of the probationary period or at such time as performance indicates that it is justified.

(g) If the initial salary is above the hiring rate, the agency may elect to increase the salary by 5% or to a higher rate if conditions justify.

(h) Only with the prior approval of the State

Personnel Director and in well-documented cases which involve circumstances such as severe labor market conditions or extraordinary qualifications will salaries be considered which exceed the limits of this Section.

Statutory Authority G.S. 126-4(2).

.0212 JUSTIFICATION

(a) If the salary requested is above the hiring rate or if it is anticipated that the salary will be increased to a rate above the minimum upon permanent appointment, the Forms PD-105 requesting appointments at rates above the hiring rate must include a statement of reasons and justification for such rates the rate that will be paid.

(b) If conditions justify appointment above the hiring rate, the agency may elect to use the hiring rate for initial appointment with the option to increase the salary to a rate above the hiring rate upon successful completion of the probationary period.

Statutory Authority G.S. 126-4.

SECTION .0400 - DEMOTION

.0401 DEFINITION AND POLICY

Demotion or reassignment is a change in status downward resulting from assignment to a position of lower level salary grade. It may result from the choice of the employee, inefficiency in performance or better utilization of individual ability.

Statutory Authority G.S. 126-4.

.0403 EFFECTIVE DATE

Demotions or reassignments shall be made effective on the first day of the pay period.

Statutory Authority G.S. 126-4.

.0405 QUALIFICATIONS

If a demotion or reassignment is made to a position within the same field of work, the employee automatically qualifies. However, if a demotion is made to a different field of work, the employee must meet the minimum education and experience requirements, or their equivalent, as set forth in the class specification.

Statutory Authority G.S. 126-4.

SECTION .0500 - SEPARATION

.0504 REDUCTION IN FORCE

(a) Policy. An appointing authority may separate an employee whenever it is necessary due to shortage of funds or work, abolishment of a position or other material change in duties or organization. Retention of employees in classes affected shall be based on systematic consideration of all the following factors: type of appointment, relative efficiency, actual and/or potential adverse impact on protected group individuals and length of service. However, neither temporary, probationary nor trainee employees in their initial six months of training shall be retained in classes where permanent employees (those who have satisfactorily completed a probationary or equivalent trial period) must be separated in the same or related class.

(b) Agency Responsibility.

(1) Each agency shall develop written guidelines for reduction-in-force which meet its particular needs and provide assurance to employees that potential reductions shall be considered on a fair and systematic basis. The guidelines of each agency shall be filed with the Office of State Personnel as a public record.

(2) It is the employing agency's responsibility to inform the employee of separation as soon as possible and to inform the employee of the priority reemployment consideration available. The agency must provide employees with a minimum of two weeks notice of separation. For persons desiring priority consideration, the releasing agency must submit an application to the Office of State Personnel requesting priority consideration. If the employee does not want assistance in finding another state job, the agency should get a written statement to this effect and share a copy with the Office of State Personnel.

(c) Appeals. A permanent career employee or an employee with permanent career status under competitive service who is separated due to reduction-in-force shall have the right to appeal to the State Personnel Commission for a review to assure that systematic procedures were applied. The term "permanent career employee" shall mean a state employee person who is in a pay grade 60 or lower position and primary position who has

been continuously employed by the State for the immediate 12 preceding months; is in a pay grade 61 to pay grade 65 position and secondary level or professional position who has been continuously employed by the state for the immediate 36 24 preceding months; is in a pay grade 66 to 70 position and management level or consultant position who has been continuously employed by the state for the immediate 48 36 preceding months; is in a pay grade 71 or higher position and has been continuously employed by the state for the immediate 60 preceding months at the time of the act, grievance or employment practice complained of. Provisions of the appeal procedure shall be followed.

(d) Affirmative Action. In accordance with federal guidelines affecting equal employment opportunity and affirmative action, any application of the reduction-in-force policy must be analyzed to determine its impact in this area.

(e) Leave

- (1) Vacation Leave. Employees are paid in a lump sum for accumulated vacation leave.
- (2) Sick Leave. Employees separated due to a reduction in force should be informed that their sick leave shall be reinstated if employed in any agency within three five years.

Statutory Authority G.S. 126-1A; 126-4(2).

.0510 PRIORITY REEMPLOYMENT CONSIDERATION

(a) Priority reemployment consideration shall be provided to:

- (1) Employees who have met the minimum service requirements of G.S. 126-5(e)(1) 126-1A, and who occupy or accept and are subsequently separated, for reasons other than just cause, from positions designated exempt as confidential or policy-making pursuant to G.S. 126-5(c)(2) and G.S. 126-5(d)(1).
- (2) Employees with permanent appointments, employees and apprentices with trainee appointments who have completed six months of service, and employees who attained permanent status prior to entering a trainee appointment, who have received notification of imminent separation due to shortage of funds or work, abolishment of a position or other

material changes in duties or organization by the process commonly known as reduction-in-force. An employee who is separated at the end of a time-limited appointment is not eligible for priority consideration.

(b) Employees separated from policy-making/confidential exempt positions for reasons other than cause and employees with priority status due to reduction in force have equal priority.

(c) The intent of priority consideration for employees separated from exempt positions is to enable a return to the career service at a salary grade equal to that held in the most recent subject position. For employees receiving notification of separation through reduction in force, the intent is to continue or restore employment at a salary grade equal to that held at the time of notification. In either instance, the salary grade and not the salary rate is the controlling factor.

(d) A person with priority status who has reason to believe priority consideration was denied in a selection decision may appeal directly to the State Personnel Commission through the established contested hearing process.

Statutory Authority G.S. 126-1A; 126-5(c)(1); 126-5(c)(2); 126-5(d)(1).

.0512 POLICY-MAKING/CONFIDENTIAL EXEMPT PRIORITY CONSIDERATION

(a) Employees removed from policy-making/confidential exempt positions, for reasons other than cause, shall receive priority reemployment consideration as follows:

- (1) An eligible employee with 10 or more years cumulative service in subject positions, including the immediately preceding 12 months prior to placement in an exempt position, shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, at the same salary grade and at a salary rate which bears a relationship with the midpoint of the salary range comparable to that of his most recent subject position. The reassignment must be within a 35 mile radius of the exempt position from which separated. If an employee is offered a reassignment which meets these criteria and refuses to accept, the priority is terminated.

(2) An eligible employee who has the minimum service requirements for permanent career status (G.S. 126-1A) but less than 10 years cumulative service in subject positions prior to placement in an exempt position, shall be permitted a one-time reemployment priority, to be exercised by the employee within one year following the effective date of his separation. Upon notice to the agency that priority is being requested, the employee shall be offered any available, non-exempt position for which he has formally applied and is qualified for, when the position applied for is equal to or below the salary grade of the most recent subject position held prior to separation; provided, however, that a prior offer may be made to a person qualified under Section 1 above, or to an employee from the same agency in which the vacancy occurs with priority status due to reduction in force. If there is not a priority applicant from the same agency in the applicant pool, an offer can be made to a current state employee with greater cumulative state service.

(b) As exercised by the employee, this priority consideration shall expire when a formal offer is extended for employment in the position being applied for. A vacant position will not be considered available, for purposes of this policy, if an "understudy" has been groomed by the agency to fill it, under a pre-existing, formally understood, written arrangement, within a structured plan of development.

(c) If an eligible policy-making exempt employee applies for and accepts a position through the regular, non priority selection process, which is at a salary grade below that held in his most recent subject position, that person shall retain the one-time priority for higher level positions for the remainder of the twelve month period.

(d) If an eligible person accepts employment outside State Government, the one-time priority shall be continued through the one-year maximum at the person's request.

Statutory Authority G.S. 126-1A; 126-5.

SECTION .0600 - REALLOCATION

.0611 REALLOCATION/SALARY RATE

(a) When an employee's position is assigned to a higher grade as a result of reallocation, subject to the availability of funds and satisfactory employee performance, salary increases, not to exceed the maximum of the range, may be given in accordance with the following:

- (1) Salaries at the hiring rate shall be increased to the new hiring rate.
- (2) Salaries at the minimum rate shall be increased to the minimum rate of the new range, and may be increased further in accordance with Paragraph (3) of this Rule.
- (3) If it is determined that a salary increase is justified, with the exception of Paragraph (b) of this Rule, the salary shall be established as follows: Salaries within the range may remain the same; or if funds are available and where appropriate, individual salary increases may be considered, but not to exceed five percent for each salary grade provided by the reallocation.

(A) in accordance with the rules for New Appointments (See 25 NCAC 1D .0200), or

(B) up to five percent for each grade provided by the reallocation, if reallocated to a position within the same classification series or occupational group.

The amount of increase shall be determined consistent with the employee's related training and experience and the nature and magnitude of the change in jobs, and take into consideration prior performance increases, work unit equity, and any other salary related considerations. When establishing salaries in accordance with the New Appointment Rules (See 25 NCAC 1D .0200), the personnel action forms must include the justification for the salary decision.

(b) However, if If an employee has been reduced to a lower salary grade through demotion, reassignment, reallocation or salary range revision, but without a corresponding reduction in salary, and within 12 months of the reduction the employee is reallocated:

- (1) The employee shall not be entitled to a reallocation increase unless the reallocation is to a grade higher than

- (2) the grade held prior to the reduction.
If reallocated to a higher grade, the number of grades in the original reduction shall be considered to have been compensated and shall not be considered in setting the salary pursuant to Part (a)(3)(B) of this Rule.

and the employee's position is later assigned to a higher grade as a result of reallocation, the number of grades in the original reduction shall be considered to have been compensated and shall not be considered in Paragraph (a) of this Rule salary setting procedure. (Example: If an employee is demoted with no change in salary and reallocated back to the same level, the salary shall remain unchanged and treated as if the demotion had not occurred; or if reallocated back to a level higher than before the demotion, the difference in the grade before the demotion and the new higher grade will be the basis for determining the reallocation increase.) Agency management is responsible for assuring that inequities are not created.

(e) If the reduction in grade occurred as much as 24 months previously, the agency may give consideration to granting a salary increase within the provisions of this policy. Factors to be considered are the nature of the change in duties and responsibilities and the need to maintain equity of salaries within the work unit.

(c) (d) Only with the prior approval of the State Personnel Director and in extreme circumstances relating to critical positions and well-documented labor market conditions will salary increases be considered which equate to more than five percent for each grade provided by the reallocation. Personnel forms must include the justification.

(d) (e) If the employee is to receive a performance salary increase on the same day as the reallocation, the performance increase shall be given before a reallocation increase is considered.

(e) (f) When an employee's position is assigned to a lower grade, one of the following options will be implemented:

- (1) When reduction in level of the position results from management's removal of duties and responsibilities from the employee because of change in demonstrated motivation, capability, acceptance of responsibility, or lack of performance, the effect is the same as a demotion and the salary must be reduced at least to the maximum as required by the policy on demotion.

- (2) When reduction in level of the position

results from position redesign because of management decisions on program changes, reorganization, or other management needs not associated with the employee's demonstrated motivation, capability, acceptance of responsibility or lack of performance, the salary of the employee may remain above the new maximum as long as the employee remains in the same classification or is promoted to a higher level position. No further increases, other than legislative increases, may be granted as long as the salary remains above the maximum.

- (3) When reduction in level of the position results from a change in the labor market or some other reason not related to change in the duties and responsibilities of the position, though the position must be reallocated to the approved classification and grade, management may elect to maintain the employee's current classification and grade by working the employee against the lower level position, so long as the employee continues to occupy the same position or is in the same classification.

- (4) Once the position is vacated, it shall be filled at the lower level.

(f) (g) It is a management responsibility to avoid creation of salary inequities among employees. Each case must be evaluated to determine which of the salary administration alternatives is most appropriate, based on the circumstances as documented to the Office of State Personnel, on appropriate forms, by the employing agency.

(g) (h) When an employee's position is assigned to the same grade level, the employee's salary shall remain unchanged.

Statutory Authority G.S. 126-4.

SECTION .1900 - HOURS OF WORK AND OVERTIME COMPENSATION

.1928 COMPENSATION

(a) The employee is to receive straight-time pay for a standard 40-hour workweek, with the provision that an additional amount equal to time and one-half the employee's regular hourly rate multiplied by the number of hours worked in excess of 40 will be added to the base pay. Such payment must be made in form of monetary compensation or compensable time off. It is the

policy of the State of North Carolina, whenever possible, to give compensatory time off, in lieu of monetary compensation for hours worked in excess of 40 hours per work week. The decision as to whether to give compensatory time off, rather than monetary compensation, for overtime worked is solely within the discretion of management. Compensatory time off shall be scheduled by management, although reasonable effort should be made to accommodate the employee as to such scheduling.

(b) An employee shall be given compensatory time off on the basis of one and one-half times the amount of time worked beyond 40 hours during a week; but such time off must be taken within 30 days from the date the overtime is performed or by the end of the following ~~pay period calendar month~~, whichever is longer. If compensatory time off is not given by the end of the ~~pay period calendar month~~ following the 30-day period, the overtime pay must be included in the employee's next regular paycheck. Overtime worked shall be recorded and compensated in units of one-tenth of an hour.

Note: The preceding provisions are not applicable to persons in law enforcement or fire protection activities and in-residence employees.

(c) Prior to employment, each successful candidate for state employment in a position subject to hours of work and overtime pay standards must sign a form acknowledging that it has been explained to him that it is the state's policy to give time off in lieu of monetary compensation, wherever possible, for hours worked beyond 40 in a work week. Agreement to this is a condition of employment with the state; failure or refusal to sign such agreement will prevent employment of that person. This signed form shall be a part of the employee's personnel file; it must be kept for at least three years following that person's separation from state employment.

(d) Upon termination of employment, an employee shall be paid for unused compensatory time off at a rate of compensation not less than either the average regular rate received by such employee during the last three years of the employee's employment or the final regular rate received by such employee, whichever is higher.

Statutory Authority G.S. 126-4.

SUBCHAPTER 1H - RECRUITMENT AND SELECTION

SECTION .0600 - GENERAL PROVISIONS

.0624 DISMISSAL

Dismissal on the basis of knowingly and willfully providing false information on a state employment application, or knowingly and willfully concealing a dishonorable military discharge shall be accomplished in accordance with the State Personnel Commission's procedures on discipline and dismissal. Providing false information on an employment application or concealing information shall be considered personal conduct for the purposes of implementing the dismissal procedure, except that two weeks' pay in lieu of notice may be given upon the recommendation of the agency and the approval of the Office of State Personnel. Only employees who are permanent career, as that term is defined in G.S. ~~126-39~~ 126-1A, are entitled to the procedures for dismissal set out in the State Personnel Commission's rules on dismissal. (Reference: 25 NCAC 1J .0600, DISCIPLINARY ACTION: SUSPENSION AND DISMISSAL, see .0608, DISMISSAL: CAUSES RELATING TO PERSONAL CONDUCT.)

Statutory Authority G.S. 126-1A; 126-4; 126-30; 126-39.

.0625 PROMOTIONAL PRIORITY CONSIDERATION FOR CURRENT EMPLOYEES

(a) A promotional priority consideration shall be provided by all agencies to all current state employees who have achieved permanent career status, as that term is defined in G.S. ~~126-39~~ 126-1A.

(b) The priority consideration which is to be given a state employee who applies for a position which represents a promotion for that employee and who otherwise meets the criteria set out in G.S. 126-7.1 is that he shall be offered the position in question.

(c) "Substantially equal qualifications" occur when the employer cannot make a reasonable determination that the job-related qualifications held by one person are significantly better suited for the position than the job-related qualifications held by another person.

Statutory Authority G.S. 126-1A; 126-4; 126-7.1.

.0628 RESOLUTION OF CONFLICT BETWEEN EMPLOYMENT PRIORITIES

In the event that the applicant group includes

both a qualified non-state employee veteran and a qualified current state employee with permanent career status as defined by G.S. 126-39 126-1A, who is seeking a promotional opportunity, the current state employee shall be offered the position if the appointing authority determines, consistent with the promotional priority policy, that the qualifications of the veteran and the current state employee are substantially equal. The same priority over any non-state employee applicant shall apply to state employees separated from policy making exempt positions for reasons other than cause, state employees notified or separated by reduction in force and on active priority reemployment status, and employees returning to state employment following a disability due to on the job injury.

Statutory Authority G.S. 126-1A; 126-4; 126-7.1; 126-39.

SUBCHAPTER 1J - EMPLOYEE RELATIONS

SECTION .0600 - DISCIPLINARY ACTION: SUSPENSION AND DISMISSAL

.0603 APPEALS

(a) A permanent career employee who has been demoted, suspended or dismissed shall have 15 calendar days from the date of his receipt of written notice of such action to file an appeal with his department/university grievance procedure. Grievances which do not allege discrimination must follow the department or university grievance procedure. An appeal of a final departmental or university decision must be filed in accordance with G.S. 150B-23 and within 30 calendar days of receipt of the final agency decision.

(b) Grievances which allege discrimination may, at the election of the employee, proceed through the department or university procedure or proceed directly to the State Personnel Commission (SPC) for a hearing by the Office of Administrative Hearings (OAH) and a decision by the SPC. A direct appeal to the SPC (such appeal involving a contested case hearing by the OAH and a recommended decision by that agency to the SPC) alleging discrimination must be filed in accordance with G.S. 150B-23 and must be filed within 30 calendar days of receipt of notice of the alleged discriminatory act.

(c) Grievances filed on an untimely basis (see G.S. 126-35, G.S. 126-36 and G.S. 126-38) must be dismissed. Allegations of discrimination raised

more than 30 calendar days after receipt of notice of the occurrence of the alleged discriminatory act must be dismissed.

Statutory Authority G.S. 126-1A; 126-35; 126-36; 126-38; 150B, Article 3; 150B-23.

.0604 CAUSES

(a) Any employee, regardless of occupation, position or profession may be warned, demoted, suspended or dismissed by the appointing authority. Such actions may be taken against permanent career employees as defined at G.S. 126-39 126-1A, only for just cause. The degree and type of action taken shall be based upon the sound and considered judgment of the appointing authority in accordance with the provisions of this Rule.

(b) There are two bases for the discipline or dismissal of employees under the statutory standard of "just cause" as set out in G.S. 126-35. These two bases are:

- (1) Discipline or dismissal imposed on the basis of unacceptable job performance;
- (2) Discipline or dismissal imposed on the basis of unacceptable personal conduct.

(c) The term "unacceptable job performance" means the failure to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by management of the work unit or agency. Satisfactory performance is that performance which is reasonable under all the circumstances. Determination of satisfactory performance shall be made by the supervisor; there is a presumption that the determination is proper and factually supported.

(d) The term "unacceptable personal conduct" is defined as:

- (1) conduct for which no reasonable person should expect to receive prior warnings;
- (2) job-related conduct which constitutes a violation of state or federal laws;
- (3) conviction of a felony or an offense involving moral turpitude;
- (4) the willful violation of known or written work rules; or
- (5) conduct unbecoming a state employee that is detrimental to state service.

(e) Either unacceptable job performance or unacceptable personal conduct constitutes just cause for discipline or dismissal. The categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case.

Statutory Authority G.S. 126-1A; 126-35.

.0608 DISMISSAL: CAUSES RELATING TO PERSONAL CONDUCT

(a) Employees may be dismissed, demoted, suspended or warned on the basis of unacceptable personal conduct. Discipline may be imposed, as a result of unacceptable conduct, up to and including dismissal without any prior warning to the employee. Oral or written warnings given for unacceptable personal conduct according to this Rule cannot be used to shorten the progressive warning process required to dismiss an employee on the basis of unsatisfactory job performance.

(b) Disciplinary demotions, suspensions or dismissals for personal conduct require written notification to the employee. Such notification must include specific reasons for the discipline and notice of the employee's right of appeal.

(c) Prior to dismissal of a permanent career employee on the basis of personal conduct, there shall be a pre-dismissal conference between the employee and the person recommending dismissal. This conference shall be held in accordance with the provision of 25 NCAC 1J .0606 (2), (3).

Note: Failure to give specific written reasons for the dismissal shall cause the dismissal to be legally ineffective, and may require backpay and attorney's fees to be paid to the employee. Time limits for filing a grievance do not start until the employee receives written notice of his/her appeal rights.

Statutory Authority G.S. 126-1A; 126-4; 126-35.

TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to amend rule cited as 26 NCAC 3 .0007; and adopt rules cited as 26 NCAC 3 .0201 - .0208.

The proposed effective date of this action is February 1, 1994.

The public hearing will be conducted at 9:00 a.m. on December 2, 1993 at the Lee House, Hearing Room #1, 422 North Blount Street, Raleigh, N.C. 27601.

R*Reason for Proposed Action: Ratification of HB 657 (OAH Mediation Program) by the 1993 Session of the North Carolina General Assembly.*

C*Comment Procedures: Comments may be submitted in writing or in person at the public hearing or in writing prior to December 2, 1993 to Elaine R. Steinbeck, APA Coordinator, P.O. Drawer 27447, Raleigh, N.C. 27611-7447.*

CHAPTER 3 - HEARINGS DIVISION

.0007 SETTLEMENT CONFERENCE

(a) A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing.

(b) Upon A settlement conference shall be held at the request of any party, or the administrative law judge, or the chief administrative law judge Chief Administrative Law Judge. Upon receipt of the request, the Chief Administrative Law Judge shall assign the case to another administrative law judge for the purpose of conducting a settlement conference. Unless both parties and the administrative law judge agree, a unilateral request for a settlement conference will not constitute good cause for a continuance. The conference shall be conducted at a time and place agreeable to all parties and the administrative law judge. It shall be conducted by telephone if any party would be required to travel more than 50 miles to attend, unless that party agrees to travel to the location set for the conference. If a telephone conference is scheduled, the parties must be available by telephone at the time of the conference.

(c) All parties shall attend or be represented at a settlement conference. Parties or their representatives shall be prepared to participate in settlement discussions.

(d) The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

(e) At the settlement conference, the parties shall be prepared to provide information and to discuss all matters required in Rule .0004 of this Chapter.

(f) If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts or other issues, the administrative law judge presiding over the settlement conference shall issue an order

confirming and approving, if necessary, those matters agreed upon. The order is binding on the administrative law judge who is assigned to hear the case.

Statutory Authority G.S. 150B-31(b).

SECTION .0200 - MEDIATION SETTLEMENT CONFERENCE

.0201 ORDER FOR MEDIATED SETTLEMENT CONFERENCE

(a) Order by Chief Administrative Law Judge. The Chief Administrative Law Judge may, by written order, require parties and their representatives to attend a pre-hearing mediated settlement conference in any contested case.

(b) Timing of the Order. The Chief Administrative Law Judge may issue the order within 10 days of the filing of the contested case petition. Paragraph (c) of this Rule and Paragraph (b) of Rule .0203 of this Section shall govern the content of the order and the date of completion of the conference.

(c) Content of Order. The Chief Administrative Law Judge's order shall:

- (1) require the mediated settlement conference be held in the contested case;
- (2) establish a deadline for the completion of the conference;
- (3) state clearly that the parties have the right to select their own mediator as provided in Rule .0202 of this Section;
- (4) state the rate of compensation of the mediator appointed by the Chief Administrative Law Judge in the event that the parties do not exercise their right to select a mediator pursuant to Rule .0202 of this Section; and
- (5) state that the parties shall be required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise apportioned by the presiding Administrative Law Judge.

(d) Motion to Dispense with Mediated Settlement Conference. A party may move the presiding Administrative Law Judge, within 10 days after the date of the Chief Administrative Law Judge's order, to dispense with the conference. Such motion shall state the reasons the relief is sought. For good cause shown, the presiding Administrative Law Judge may grant the motion.

(e) Motion for Mediated Settlement Conference. In contested cases not ordered to mediated settlement conference, any party may move the presid-

ing Administrative Law Judge to order such a conference. Such motion shall state the reasons why the order should be allowed and shall be served on non-moving parties. Objections may be filed in writing with the presiding Administrative Law Judge within 10 days after the date of the service of the motion. Thereafter, the presiding Administrative Law Judge shall rule upon the motion without a hearing and notify the parties or their attorneys of the ruling.

Statutory Authority G.S. 150B-23.1.

.0202 SELECTION OF MEDIATOR

(a) Selection of Certified Mediator by Agreement of Parties. The parties may select a certified mediator by agreement within 21 days of the Chief Administrative Law Judge's order. The petitioner's attorney shall file with the Office of Administrative Hearings a Notice of Selection of Mediator by Agreement within 21 days of the Chief Administrative Law Judge's order. Such notice shall include: the name, address and telephone number of the mediator selected; the rate of compensation of the mediator; the agreement of the parties as to the selection of the mediator and rate of compensation; and whether or not the mediator is certified.

(b) Nomination and the Office of Administrative Hearings Approval of a Non-Certified Mediator. The parties may select a mediator who is not certified but who, in the opinion of the parties and the presiding Administrative Law Judge, is otherwise qualified by training or experience to mediate all or some of the issues in the action and who agrees to mediate indigent cases without pay. If the parties select a non-certified mediator, the petitioner's attorney shall file with the presiding Administrative Law Judge a Nomination of Non-Certified Mediator within 21 days of the Chief Administrative Law Judge's order. Such nomination shall include: the name, address and telephone number of the mediator; the training, experience or other qualifications of the mediator; the rate of compensation of the mediator; and the agreement of the parties as to the selection of the mediator and rate of compensation. The presiding Administrative Law Judge shall rule on the nomination without a hearing, shall approve or disapprove of the parties' nomination and shall notify the parties of the presiding Administrative Law Judge's decision.

(c) Appointment of Mediator by the presiding Administrative Law Judge. If the parties cannot agree upon the selection of a mediator, the

petitioner's attorney shall so notify the presiding Administrative Law Judge and request, on behalf of all parties, that the presiding Administrative Law Judge appoint a mediator. The motion must be filed within 21 days of the date of the Chief Administrative Law Judge's order and shall state that the attorneys for the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. Upon receipt of a motion to appoint a mediator, or in the event the petitioner's attorney has not filed a Notice of Selection or Nomination of Non-Certified Mediator with the presiding Administrative Law Judge within 21 days of the Chief Administrative Law Judge's order, the presiding Administrative Law Judge shall appoint a certified mediator. Only mediators who agree to mediate indigent cases without pay shall be appointed.

(d) Mediator Information Directory. To assist the parties in the selection of a mediator by agreement, the Office of Administrative Hearings shall prepare and keep current a list of certified mediators who wish to mediate contested cases. The list shall be kept in the Office of Administrative Hearings and made available to the parties upon request.

(e) Disqualification of Mediator. Any party may move for an order disqualifying the mediator. For good cause, such order shall be entered. If the mediator is disqualified, a replacement mediator shall be selected by the parties or appointed by the presiding Administrative Law Judge pursuant to this Rule. Nothing in this Paragraph shall preclude mediators from disqualifying themselves.

Statutory Authority G.S. 150B-23.1.

.0203 MEDIATION SETTLEMENT CONFERENCE

(a) Where Conference is to be Held. Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in the courthouse or other public building in the county where the contested case is pending. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice to all attorneys and unrepresented parties of the time and location of the conference.

(b) When Conference is to be Held. The Chief Administrative Law Judge's order issued pursuant to Paragraph (b) of Rule .0201 of this Section shall clearly state a date of completion for the

conference. Such date shall not be less than 90 days or more than 120 days after the issuance of the Chief Administrative Law Judge's order. The Chief Administrative Law Judge may shorten these time limits in order to meet statutorily imposed deadlines for the hearing of certain types of contested cases.

(c) Request to Extend Date of Completion. A party, or the mediator, may request the presiding Administrative Law Judge to extend the deadline for completion of the conference. Such request shall state the reasons the continuance is sought and shall be served by the moving party upon the other parties and the mediator. The presiding Administrative Law Judge may grant the request and enter an order setting a new date for the completion of the conference, which date may be set at any time prior to hearing. Such order shall be served upon the parties and the mediator.

(d) Recesses. The mediator may recess the conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.

(e) The Mediated Settlement Conference Is Not To Delay Other Proceedings. The mediated settlement conference shall not be cause for the delay of other proceedings in the contested case, including the completion of discovery, the filing or hearing of motions, or the hearing of the contested case, except by order of the presiding Administrative Law Judge.

Statutory Authority G.S. 150B-23.1.

.0204 DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS

(a) Attendance. The following persons shall physically attend a mediated settlement conference:

- (1) All individual parties; or an officer, director or employee having authority to settle the claim for a corporate party; or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the agency and to recommend settlement to the appropriate decision making body of the agency; and
- (2) The party's counsel of record, if any; and
- (3) For any insured party against whom a claim is made, a representative of the insurance carrier who is not such carrier's outside counsel and who has full authority to settle the claim.

(b) Finalizing Agreement. Upon reaching agreement, the parties shall reduce the agreement to writing and sign it along with their counsel. By stipulation of the parties and at their expense, the agreement may be electronically or stenographically recorded. A consent judgment, voluntary dismissal, or withdrawal of petition shall be filed with the Office of Administrative Hearings by such persons as the parties shall designate.

(c) Payment of Mediator's Fee. The parties shall pay the mediator's fee as provided by Rule .0207 of this Section.

Statutory Authority G.S. 150B-23.1.

.0205 SANCTIONS FOR FAILURE TO ATTEND

If a person fails to attend a duly ordered mediated settlement conference without good cause, the presiding Administrative Law Judge may impose upon the party or his principal any lawful sanction authorized by G.S. 150B-33(b)(8) or (10).

Statutory Authority G.S. 150B-23.1.

.0206 AUTHORITY AND DUTIES OF MEDIATORS

(a) Authority of Mediator.

- (1) Control of Conference. The mediator shall at all times be in control of the conference and the procedures to be followed.
- (2) Private Consultation. The mediator may meet and consult privately with any party or parties or their counsel during the conference.
- (3) Scheduling the Conference. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the parties, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

(b) Duties of Mediator.

- (1) The mediator shall define and describe the following to the parties at the beginning of the conference:
 - (A) The process of mediation;
 - (B) The differences between mediation and other forms of conflict resolution;
 - (C) The costs of the mediated settlement conference;
 - (D) The facts that the mediated settlement conference is not a hearing, the

mediator is not a judge, and the parties retain their right to a hearing if they do not reach settlement;

(E) The circumstances under which the mediator may meet alone with either of the parties or with any other person;

(F) Whether and under what conditions communications with the mediator will be held in confidence during the conference;

(G) The inadmissibility of conduct and statements as provided by Rule 408 of the North Carolina Rules of Evidence;

(H) The duties and responsibilities of the mediator and the parties; and

(I) The fact that any agreement reached will be reached by mutual consent of the parties.

(2) Disclosure. The mediator has a duty to be impartial and to advise all parties of any circumstances bearing on possible bias, prejudice or partiality.

(3) Declaring Impasse. It is the duty of the mediator to timely determine when mediation is not viable, that an impasse exists, or that mediation should end.

(4) Reporting Results of Conference. The mediator shall file a written report with the parties and presiding Administrative Law Judge as to whether or not agreement was reached by the parties. If a full agreement was reached, the report shall state whether the action will be concluded by consent judgment, voluntary dismissal, or withdrawal of petition and shall identify the persons designated to file such pleadings. If a full agreement is not reached, the report shall state the nature of any partial agreement and set out the terms of those matters agreed upon. A copy of the Mediator's report shall also be provided to the Attorney General of North Carolina or his designee responsible for evaluating the mediation program pursuant to the 1993 N.C. Session Laws, c. 363, s. 2.

(5) Scheduling and Holding the Conference. It is the duty of the mediator to schedule the conference and conduct it prior to the conference completion deadline set out in the Chief Administrative Law Judge's order. Deadlines for completion of the conference shall

be strictly observed by the mediator unless said time limit is changed by a written order of the presiding Administrative Law Judge.

Statutory Authority G.S. 150B-23.1.

.0207 COMPENSATION OF THE MEDIATOR

(a) By Agreement. When the mediator is stipulated to by the parties, compensation shall be as agreed upon between the parties and the mediator.

(b) By Order. When the mediator is appointed by the Office of Administrative Hearings, the mediator shall be compensated by the parties at the uniform hourly rate set by the Chief Administrative Law Judge.

(c) Indigent Cases. No party found to be indigent by the presiding Administrative Law Judge for the purposes of these Rules shall be required to pay a mediator appointed or selected pursuant to these Rules. Any mediator conducting a settlement conference pursuant to these Rules shall waive the payment of fees from parties found by the presiding Administrative Law Judge to be indigent. Any party may move the presiding Administrative Law Judge for a finding of indigence and to be relieved of the obligation to pay that party's share of the mediator's compensation. Such motion shall be heard subsequent to the completion of the conference or, if the parties do not settle their contested case, subsequent to the conclusion of the contested case hearing but prior to the issuance of the Administrative Law Judge's recommended or final decision. The presiding Administrative Law Judge may take into consideration the outcome of the contested case. The presiding Administrative Law Judge shall enter an order granting or denying a party's request.

(d) Payment of Compensation by Parties. Unless otherwise agreed to by the parties or ordered by the presiding Administrative Law Judge, costs of the mediated settlement conference shall be paid: one share by the petitioner, one share by the respondent and an equal share by any intervenor. Parties obligated to pay a share of the costs shall pay them equally. Payment shall be due upon completion of the conference.

Statutory Authority G.S. 150B-23.1.

certified as a mediator by the Administrative Office of the Courts pursuant to Rule 8 of the North Carolina Supreme Court's Rules of Mediated Settlement Conferences, 329 N.C. 795, effective December 1, 1993 and as may be subsequently amended.

Statutory Authority G.S. 150B-23.1.

.0208 MEDIATOR

For purposes of this Section the term "certified mediator" shall mean a person who is currently

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

ADMINISTRATION

Department of Administration's Minimum Criteria

1 NCAC 39 .0101 - Purpose	<i>RRC Objection</i>	06/17/93
No Response from Agency	<i>Obj. Cont'd</i>	07/15/93
Agency Responded	<i>Obj. Cont'd</i>	08/20/93
Agency Revised Rule	<i>Obj. Removed</i>	09/17/93
1 NCAC 39 .0301 - Exceptions to Minimum Criteria	<i>RRC Objection</i>	06/17/93
No Response from Agency	<i>Obj. Cont'd</i>	07/15/93
Agency Responded	<i>Obj. Cont'd</i>	08/20/93
Agency Revised Rule	<i>Obj. Removed</i>	09/17/93

AGRICULTURE

North Carolina State Fair

2 NCAC 20B .0102 - Traffic Regulations	<i>RRC Objection</i>	09/17/93
Agency Revised Rule	<i>Obj. Removed</i>	09/17/93
2 NCAC 20B .0106 - General	<i>RRC Objection</i>	09/17/93
2 NCAC 20B .0204 - Forfeiture	<i>RRC Objection</i>	09/17/93
Agency Revised Rule	<i>Obj. Removed</i>	09/17/93

Plant Industry

2 NCAC 48C .0023 - Analysis for Farmers or Seedmen	<i>RRC Objection</i>	09/17/93
Agency Revised Rule	<i>Obj. Removed</i>	09/17/93

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

15A NCAC 7H .2002 - Approval Procedures	<i>RRC Objection</i>	09/17/93
15A NCAC 7H .2004 - General Conditions	<i>RRC Objection</i>	09/17/93

Environmental Management

15A NCAC 2H .0610 - Permit Requirements for Toxic Air Pollutants	<i>RRC Objection</i>	09/17/93
Agency Revised Rule	<i>Obj. Removed</i>	09/17/93
15A NCAC 2H .1110 - Implementation	<i>RRC Objection</i>	02/18/93
Agency Responded	<i>Obj. Cont'd</i>	03/18/93
Agency Responded	<i>Obj. Cont'd</i>	05/19/93
Agency Responded	<i>Obj. Cont'd</i>	06/17/93
Agency Responded	<i>Obj. Cont'd</i>	07/15/93
No Response from Agency	<i>Obj. Cont'd</i>	08/20/93
Agency Responded	<i>Obj. Removed</i>	09/17/93
15A NCAC 2L .0103 - Policy	<i>RRC Objection</i>	09/17/93

<i>Agency Revised Rule</i>	<i>RRC Objection</i>	09/17/93
<i>15A NCAC 2L .0104 - RS Designation</i>	<i>RRC Objection</i>	09/17/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/17/93
<i>15A NCAC 2L .0113 - Variance</i>	<i>RRC Objection</i>	09/17/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/17/93
<i>15A NCAC 2L .0201 - Groundwater Classifications</i>	<i>RRC Objection</i>	09/17/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/17/93

Health: Epidemiology

<i>15A NCAC 19B .0301 - Application for Initial Permit</i>	<i>RRC Objection</i>	09/17/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/17/93
<i>15A NCAC 19B .0304 - Conditions for Renewal of Permit</i>	<i>RRC Objection</i>	09/17/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/17/93
<i>15A NCAC 19B .0309 - Qualification of Maintenance Personnel</i>	<i>RRC Objection</i>	09/17/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/17/93

Health: Personal Health

<i>15A NCAC 21D .0501 - Allowable Foods</i>	<i>RRC Objection</i>	09/17/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/17/93
<i>15A NCAC 21D .1204 - Client Eligibility</i>	<i>RRC Objection</i>	09/17/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/17/93
<i>15A NCAC 21D .1207 - Payment for Reimbursable Services</i>	<i>RRC Objection</i>	09/17/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/17/93

HUMAN RESOURCES**Children's Services**

<i>10 NCAC 41R .0002 - Administration and Organization</i>	<i>RRC Objection</i>	07/15/93
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	08/20/93
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	09/17/93
<i>Agency Filed Rule for Codification Over RRC Objection</i>		<i>Eff. 10/01/93</i>

Medical Assistance

<i>10 NCAC 26B .0112 - North Carolina Specialty Hospital Services</i>	<i>RRC Objection</i>	09/17/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/17/93

LICENSING BOARDS AND COMMISSIONS**Foresters**

<i>21 NCAC 20 .0020 - Certification of Consulting Foresters</i>	<i>RRC Objection</i>	09/17/93
<i>21 NCAC 20 .0021 - Rejection of Consultant Affidavit</i>	<i>RRC Objection</i>	09/17/93
<i>21 NCAC 20 .0022 - Handling of Complaints</i>	<i>RRC Objection</i>	09/17/93

Landscape Architects

<i>21 NCAC 26 .0205 - Forms of Practice</i>	<i>RRC Objection</i>	06/17/93
<i>Rule Returned to Agency</i>		07/15/93
<i>Agency Filed Rule for Codification Over RRC Objection</i>		<i>Eff. 08/01/93</i>
<i>21 NCAC 26 .0207 - Application of Professional Seal</i>	<i>RRC Objection</i>	06/17/93
<i>Rule Returned to Agency</i>		07/15/93

<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff. 08/01/93</i>
21 NCAC 26 .0208 - <i>Improper Conduct</i>	<i>RRC Objection 06/17/93</i>
<i>Rule Returned to Agency</i>	<i>07/15/93</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff. 08/01/93</i>

Social Work

21 NCAC 63 .0210 - <i>Provisional Certificates</i>	<i>RRC Objection 08/20/93</i>
<i>Agency Revised Rule</i>	<i>RRC Objection 08/20/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 09/17/93</i>

PUBLIC EDUCATION**Elementary and Secondary Education**

16 NCAC 6C .0312 - <i>Certificate Suspension and Revocation</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 09/17/93</i>

REVENUE**Departmental Rules**

17 NCAC 1C .0502 - <i>Method of Payment</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 09/17/93</i>
17 NCAC 1C .0503 - <i>EFT Definitions</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 09/17/93</i>

Sales and Use Tax

17 NCAC 7B .1907 - <i>Scrap Tire Disposal Tax</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 09/17/93</i>

TRANSPORTATION**Division of Highways**

19A NCAC 2B .0162 - <i>Delegation to Manager of Program and Policy</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 09/17/93</i>
19A NCAC 2B .0164 - <i>Use of Right of Way Consultants</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 09/17/93</i>
19A NCAC 2B .0208 - <i>Uniform Traffic Control Devices</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 09/17/93</i>
19A NCAC 2B .0225 - <i>Blue Star Memorial Highway Signs</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 09/17/93</i>
19A NCAC 2B .0602 - <i>Obtaining a Driveway Construction Permit</i>	
<i>Agency Withdrew Rule</i>	<i>09/17/93</i>
19A NCAC 2D .0801 - <i>Pre-Qualifying to Bid: Requalification</i>	<i>RRC Objection 09/17/93</i>
19A NCAC 2D .0802 - <i>Invitation to Bid</i>	<i>RRC Objection 09/17/93</i>
19A NCAC 2D .0803 - <i>Advertisement and Invitations for Bids</i>	<i>RRC Objection 09/17/93</i>
19A NCAC 2D .0815 - <i>Rejection of Bids</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 09/17/93</i>
19A NCAC 2D .0821 - <i>Return of Bid Bond or Bid Deposit</i>	<i>RRC Objection 09/17/93</i>
19A NCAC 2D .0825 - <i>Confidentiality of Cost Estimates and Bidding Lists</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 09/17/93</i>
19A NCAC 2E .0217 - <i>Specific Information Program Definitions</i>	<i>RRC Objection 09/17/93</i>

RRC OBJECTIONS

<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/17/93
<i>19A NCAC 2E .0220 - Composition of Signs</i>	<i>RRC Objection</i>	09/17/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/17/93
<i>19A NCAC 2E .0222 - Contracts with the Department</i>	<i>RRC Objection</i>	09/17/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/17/93

This Section of the *Register* lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

1 NCAC 5A .0010 - ADMINISTRATIVE PROCEDURES

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared two portions of Rule 1 NCAC 5A .0010 void as applied in *Stauffer Information Systems, Petitioner v. The North Carolina Department of Community Colleges and The North Carolina Department of Administration, Respondent and The University of Southern California, Intervenor-Respondent* (92 DOA 0666).

10 NCAC 3H .0315(b) - NURSING HOME PATIENT OR RESIDENT RIGHTS

Dolores O. Nesnow, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3H .0315(b) void as applied in *Barbara Jones, Petitioner v. North Carolina Department of Human Resources, Division of Facility Services, Licensure Section, Respondent* (92 DHR 1192).

10 NCAC 3R .1124(f) - ACCESSIBILITY TO SERVICES

Beecher R. Gray, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .1124(f) void as applied in *Britthaven, Inc. d/b/a Britthaven of Morganton, Petitioner v. N.C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent and Valdese Nursing Home, Inc., Respondent-Intervenor* (92 DHR 1785).

15A NCAC 3O .0201(a)(1)(A) - STDS FOR SHELLFISH BOTTOM & WATER COLUMN LEASES

Julian Mann III, Chief Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 3O .0201(a)(1)(A) void as applied in *William R. Willis, Petitioner v. North Carolina Division of Marine Fisheries, Respondent* (92 EHR 0820).

15A NCAC 19A .0202(d)(10) - CONTROL MEASURES - HIV

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 19A .0202(d)(10) void as applied in *ACT-UP TRIANGLE (AIDS Coalition to Unleash Power Triangle), Steven Harris, and John Doe, Petitioners v. Commission for Health Services of the State of North Carolina, Ron Levine, as Assistant Secretary of Health and State Health Director for the Department of Environment, Health, and Natural Resources of the State of North Carolina, William Cobey, as Secretary of the Department of Environment, Health, and Natural Resources of the State of North Carolina, Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the North Carolina Department of Environment, Health, and Natural Resources, Wayne Bobbitt Jr., as Chief of the HIV/STD Control Branch of the North Carolina Department of Environment, Health, and Natural Resources, Respondents* (91 EHR 0818).

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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LMS Express, Inc. v. Administration, Div of Purchase & Contract	92 DOA 0735	Morgan	06/04/93	
Stauffer Information Systems v. Community Colleges & Administration	92 DOA 0803	West	06/10/93	8:7 NCR 613
McLaurin Parking Co. v. Administration	92 DOA 1662	Morrison	04/02/93	8:3 NCR 320
Warren H. Arrington Jr. v. Division of Purchase & Contract	93 DOA 0132	West	07/21/93	

ALCOHOLIC BEVERAGE CONTROL COMMISSION

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Curtis Ray Lynch v. Alcoholic Beverage Control Comm.	92 ABC 0288	Gray	05/18/93	
Alcoholic Beverage Control Comm. v. Ezra Everett Rigsbee	92 ABC 0702	West	07/30/93	
Alcoholic Beverage Control Comm. v. Partnership, Phillip Owen Edward	92 ABC 0978	Gray	05/28/93	
Alcoholic Beverage Control Comm. v. Gary Morgan Neugent	92 ABC 1086	Becton	03/22/93	
Alcoholic Beverage Control Comm. v. Azzat Aly Amer	92 ABC 1149	Reilly	09/01/93	
Alcoholic Beverage Control Comm. v. Kirby Ronald Eldridge	92 ABC 1153	Chess	04/26/93	
Alcoholic Beverage Control Comm. v. Gloria Black McDuffie	92 ABC 1476	West	05/26/93	
Alcoholic Beverage Control Comm. v. Larry Isaac Hailstock	92 ABC 1483	Reilly	04/07/93	
Alcoholic Beverage Control Comm. v. Anthony Ralph Cecchini Jr.	92 ABC 1690	Morgan	06/29/93	
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Alcoholic Beverage Control Comm. v. Mermaid, Inc.	93 ABC 0076	Gray	08/04/93	
Alcoholic Beverage Control Comm. v. Majdi Khalid Wahdan	93 ABC 0087	Becton	07/06/93	8:9 NCR 785
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Alcoholic Beverage Control Comm. v. Homer Patrick Godwin Jr.	93 ABC 0125	Reilly	05/13/93	
Alcoholic Beverage Control Comm. v. Wanda Lou Ball	93 ABC 0182	Nesnow	07/29/93	
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Alcoholic Beverage Control Comm. v. Billy Finner McSwain Jr.	93 ABC 0239	Gray	08/26/93	
Jean Hoggard Askew v. Alcoholic Beverage Control Commission	93 ABC 0255	West	09/10/93	
ABC Comm. v. Partnership/T/A Corrothers Comty Ctr & Private Club	93 ABC 0318	Reilly	07/22/93	
Alcoholic Beverage Control Comm. v. James Elwood Alphin	93 ABC 0326	Gray	08/26/93	
Alcoholic Beverage Control Comm. v. James William Campbell	93 ABC 0327	Gray	08/09/93	
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Zachary Andre Jones v. Alcoholic Beverage Control Commission	93 ABC 0421	West	09/13/93	
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Alcoholic Beverage Control Comm. v. Bistro Enterprises, Inc.	93 ABC 0430	Reilly	10/07/93	
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Lester Moore v. Weatherization Assistance Program	93 COM 0105	Gray	03/08/93
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Anthony L. Hart v. Victims Compensation Comm.	92 CPS 0937	Chess	03/01/93

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* Consolidated cases.

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Anthony Curry v. Human Resources	92 CSE 1631	Reilly	03/25/93	
John G. Williams v. Human Resources	92 CSE 1632	Mann	08/10/93	
Larry W. Golden v. Human Resources	92 CSE 1633	Reilly	03/25/93	
William J. Carter v. Human Resources	92 CSE 1637	Nesnow	05/19/93	
Mark W. Dean v. Human Resources	92 CSE 1638	Reilly	07/15/93	
Tyrone Thomas v. Human Resources	92 CSE 1640	Mann	07/22/93	
Rilton E. May v. Human Resources	92 CSE 1642	Morgan	07/29/93	
Joe K. Martin v. Human Resources	92 CSE 1650	Reilly	09/10/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1652*	Reilly	03/25/93	
Larry Thompson v. Human Resources	92 CSE 1655	Reilly	07/22/93	
Billie J. Smith v. Human Resources	92 CSE 1656	Gray	07/23/93	
Patrick Floyd v. Human Resources	92 CSE 1663	Reilly	05/20/93	
Dennis W. Nolan v. Human Resources	92 CSE 1670	Morrison	06/25/93	
Eric L. Garland v. Human Resources	92 CSE 1671	Mann	07/22/93	
Ira Alston Jr. v. Human Resources	92 CSE 1703	Becton	06/16/93	
Elvis Bernard Telfair v. Human Resources	92 CSE 1704	Reilly	09/15/93	
Ronald G. Bolden v. Human Resources	92 CSE 1706	Mann	06/25/93	
Marvin Holley v. Human Resources	92 CSE 1713	Mann	06/08/93	
Eddie Short v. Human Resources	92 CSE 1714	West	07/15/93	
Michael Tywan Marsh v. Human Resources	92 CSE 1716	Gray	06/17/93	
Leroy Jones v. Human Resources	92 CSE 1718	Gray	06/17/93	
Antonio M. Townsend v. Human Resources	92 CSE 1721	Chess	08/30/93	
Kevin J. Close v. Human Resources	92 CSE 1727	Chess	08/30/93	
Thadius Bonapart v. Human Resources	92 CSE 1740	Chess	09/21/93	

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Joseph Eric Lewis v. Human Resources	92 CSE 1748	Becton	08/02/93	
Ronald Dean Lowery v. Human Resources	92 CSE 1771	West	07/15/93	
Tamera S. Hatfield v. Human Resources	92 CSE 1772	Chess	08/30/93	
James E. Blakney v. Human Resources	92 CSE 1779	Nesnow	05/13/93	
Oswinn Blue v. Human Resources	93 CSE 0073	Chess	08/03/93	
Kelvin D. Jackson v. Human Resources	93 CSE 0221	West	08/04/93	
Linwood Staton v. Human Resources	93 CSE 0250	Nesnow	08/13/93	
Anthony Watson v. Human Resources	93 CSE 0396	Nesnow	08/04/93	
Eugene Polk v. Human Resources	93 CSE 0437	Chess	08/11/93	
Glenda K. Hollifield v. Human Resources	93 CSE 0545	West	10/11/93	
Kenneth W. Williams v. Human Resources	93 CSE 0590	Reilly	10/18/93	
Charles Thompson Jr. v. Human Resources	93 CSE 0696	Morrison	09/23/93	
Barbara W. Catlett v. Human Resources	92 DCS 0577	West	03/15/93	
Laurel Langford v. Human Resources	92 DCS 1181	Gray	05/04/93	8:5 NCR 441
Ida Diane Davis v. Human Resources	92 DCS 1200	Gray	03/29/93	
Hatsuko Klein v. Human Resources	92 DCS 1271	Reilly	05/05/93	
Karen Mullins Martin v. Human Resources	92 DCS 1783	West	08/04/93	
Ora Lee Brinkley v. David T. Flaherty, Secretary of Human Resources	92 DHR 0608	Chess	08/27/93	
Mary McDuffie v. Human Resources Child Development	93 DHR 0651	Becton	09/10/93	
Leon Barbee v. Human Resources	92 DHR 0658	Morrison	04/30/93	8:4 NCR 392
Carrolton of Dunn, Inc. v. Human Resources	92 DHR 1101	Morgan	07/26/93	
Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb-Lohavichan Rentals	92 DHR 1109*	Morgan	06/22/93	8:8 NCR 687
Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb-Lohavichan Rentals	92 DHR 1110*	Morgan	06/22/93	8:8 NCR 687
Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Fayetteville d/b/a Fayetteville Kidney Center and Webb-Lohavichan Rentals v. Human Resources, Division of Facility Services, Certificate of Need Section and Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Hoke County	92 DHR 1116*	Morgan	06/22/93	8:8 NCR 687
Renal Care of Rocky Mount, Inc. v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Tarboro, Rocky Mount Nephrology Associates, Inc., Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Rocky Mount d/b/a Rocky Mount Kidney Center, and Rocky Mount Kidney Center Associates	92 DHR 1120	Gray	06/18/93	8:8 NCR 687
James H. Hunt Jr. v. Division of Medical Assistance	92 DHR 1145	Becton	05/13/93	8:5 NCR 443
Barbara Jones v. Human Resources	92 DHR 1192	Nesnow	04/02/93	8:3 NCR 313
Joyce P. Williams v. Human Resources	92 DHR 1275	Gray	03/15/93	
Snoopy Day Care, Diane Hamby v. Child Day Care Licensing	92 DHR 1320	Morgan	05/21/93	
Cynthia Reed v. Human Resources	92 DHR 1329	Chess	05/10/93	
The Neighborhood Center v. Human Resources	92 DHR 1375	Chess	08/02/93	
Helm's Rest Home, Ron J. Schimpf/Edith H. Wilson v. Human Resources	92 DHR 1604	Reilly	05/10/93	
Jo Ann Kinsey v. NC Memorial Hospital Betty Hutton, Volunteer Svc.	92 DHR 1612	Chess	03/08/93	
Amy Clara Williamson v. NC Mem Hosp Betty Hutton, Volunteer Svc.	92 DHR 1613	Chess	03/08/93	
Betty Butler v. Human Resources	92 DHR 1614	Chess	03/09/93	
Wayne Sanders and Brenda Sanders v. Human Resources	92 DHR 1699	Reilly	06/07/93	8:7 NCR 632
Britthaven, Inc. v. Human Resources & Valdese Nursing Home, Inc.	92 DHR 1785	Gray	09/17/93	
Samuel Benson v. Office of Admit. Hearings for Medicaid	93 DHR 0010	Becton	03/11/93	
James W. McCall, Alice V. McCall v. Human Resources	93 DHR 0102	Morgan	10/05/93	
Vernice Whisman v. Human Resources	93 DHR 0332	Morgan	09/23/93	
Cabarrus Cty Dept. of Social Svcs. v. Human Resources	93 DHR 0373	Morgan	07/20/93	
Haunah F. Tonkel v. Human Resources	93 DHR 0378	Nesnow	09/10/93	
Fannie Lewis v. Human Resources	93 DHR 0379	Gray	06/28/93	
Human Resources, Div. of Child Development v. Susan Amato	93 DHR 0418	Morgan	08/26/93	

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Katie Kelly v. Human Resources	93 DHR 0441	Chess	07/26/93	
Christopher Durrer, Wilson Memorial Hospital v. Human Resources	93 DHR 0566	Chess	09/17/93	
Darryl A. Richardson v. Human Resources	93 DHR 0679	Becton	09/30/93	
Home Health Prof., Barbara P. Bradsher, Admin v. Human Resources	93 DHR 0737	Chess	09/23/93	
Sandra Gail Wilson v. Child Abuse/Neglect, Div. of Child Development	93 DHR 0782	Nesnow	09/09/93	
INSURANCE				
Carolyn M. Hair v. St Employees Comprehensive Major Medical	92 INS 1464	Chess	03/10/93	
Scotland Memorial Hospital, Mary Horne Odom v. Bd./Trustees//	92 INS 1791	Reilly	08/19/93	
St. of N.C. Teachers' & St. Emp. Comp. Major Medical Plan, and				
David G. Devries, as Exec. Admin. of the N.C. Teachers' & St. Emp.				
Comp. Major Medical Plan				
Phyllis C. Harris v. Teachers' & St. Emp. Comp. Major Med. Plan	93 INS 0197	Nesnow	07/29/93	
JUSTICE				
Philip B. Cates v. Justice, Attorney General's Office	90 DOJ 0353	Morgan	08/30/93	8:13 NCR 1281
Jennings Michael Bostic v. Sheriffs' Ed. & Traning Stds. Comm.	92 DOJ 0656* ⁷	West	06/22/93	
Colin Carlisle Mayers v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0761	Morrison	05/10/93	
Jennings Michael Bostic v. Sheriffs' Ed. & Traning Stds. Comm.	92 DOJ 0829* ⁷	West	06/22/93	
Michael Charles Kershner v. Criminal Justice Ed & Training Stds Comm	92 DOJ 0869	Morgan	08/11/93	
George Wilton Hawkins v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1081* ⁹	Morgan	07/09/93	
Marilyn Jean Britt v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1088	Morrison	03/16/93	
Tim McCoy Deck v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1367	Chess	04/01/93	
Richard Zander Frink v. Criminal Justice Ed. & Traning Stds. Comm.	92 DOJ 1465	Nesnow	05/28/93	
Sherri Ferguson Revis v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 1756	Gray	03/23/93	
Mark Thomas v. Sheriffs' Ed. & Training Standards Commission	93 DOJ 0151	West	04/21/93	
George Wilton Hawkins v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0156* ⁹	Morgan	07/09/93	
Lonnice Allen Fox v. Sheriffs' Ed. & Training Standards Commission	93 DOJ 0196	Morrison	08/09/93	
Alarm Systems Licensing Bd. v. Eric Hoover	93 DOJ 0201	Becton	07/12/93	
Alarm Systems Licensing Bd. v. Vivian Darlene Gaither	93 DOJ 0202	Chess	05/10/93	
Rebecca W. Stevenson v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 0357	Morrison	09/13/93	
Lloyd Harrison Bryant Jr. v. Criminal Justice Ed & Training Stds Comm	93 DOJ 0377	Reilly	08/31/93	
William B. Lipscomb v. Private Protective Services Board	93 DOJ 0458	Morrison	06/01/93	
Private Protective Svc. Bd. v. Fred D. Rector	93 DOJ 0479	Mann	08/19/93	
Private Protective Svc. Bd. v. Alan D. Simpson	93 DOJ 0480	West	07/21/93	
William M. Medlin v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0569	Chess	10/06/93	
Carl Michael O'Byrne v. Alarm Systems Licensing Board	93 DOJ 0844	Nesnow	09/08/93	8:13 NCR 1300
LABOR				
Greensboro Golf Center, Inc. v. Labor	92 DOL 0204	Nesnow	04/15/93	
Ronald Dennis Hunt v. Labor	92 DOL 1319	Morgan	06/17/93	
Jeffrey M. McKinney v. Labor	92 DOL 1333	Morrison	06/21/93	
MORTUARY SCIENCE				
Board of Mortuary Science v. Triangle Funeral Chapel, Inc.	92 BMS 1169	Reilly	04/29/93	8:4 NCR 396
PUBLIC INSTRUCTION				
Frances F. Davis, Parent of Joseph E. Davis v. Public Instruction	93 EDC 0628	Mann	07/29/93	
Donna Marie Snyder v. Public Instruction	93 EDC 0731	Nesnow	09/16/93	
STATE PERSONNEL				
Frances K. Pate v. Transportation	88 OSP 0340	Morrison	05/03/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart,	90 OSP 1064* ⁴	Mann	05/04/93	
James H. Johnson, James D. Fishel v. Justice				
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart,	90 OSP 1065* ⁴	Mann	05/04/93	
James H. Johnson, James D. Fishel v. Justice				
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart,	90 OSP 1066* ⁴	Mann	05/04/93	
James H. Johnson, James D. Fishel v. Justice				
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart,	90 OSP 1067* ⁴	Mann	05/04/93	
James H. Johnson, James D. Fishel v. Justice				
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart,	90 OSP 1068* ⁴	Mann	05/04/93	
James H. Johnson, James D. Fishel v. Justice				

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Connie B. Lee v. Justice	91 OSP 0011	Morgan	10/05/93	8:15 NCR 1498
Bernie B. Kelly v. Correction	91 OSP 0344	Morrison	05/27/93	
Brenda G. Mitchell v. Correction	91 OSP 0625	West	03/08/93	8:1 NCR 75
Walton M. Pittman v. Correction	91 OSP 0805	Morgan	10/06/93	
Adolph Alexander Justice Jr. v. Motor Vehicles, Transportation	91 OSP 0860	Chess	07/19/93	
Clayton Brewer v. North Carolina State University	91 OSP 0941	West	04/02/93	8:3 NCR 306
Sherman Daye v. Transportation	91 OSP 0951	West	05/07/93	
Donnie M. White v. Correction	91 OSP 1236	Morgan	04/05/93	
Gregory Samuel Parker v. Environment, Health, & Natural Resources	91 OSP 1344*	Chess	05/20/93	
Renee E. Shepherd v. Winston-Salem State University	91 OSP 1391	Morgan	04/28/93	
Eva Dockery v. Human Resources	92 OSP 0010	Chess	05/03/93	
Lee P. Crosby v. Michael Kelly, William Meyer and EHR	92 OSP 0056	Gray	06/07/93	
William Marshall Boyd Jr. v. County Commissioners of Hyde & Certain Board of Health Members	92 OSP 0090	Gray	08/25/93	
Gregory Samuel Parker v. Environment, Health, & Natural Resources	92 OSP 0188*	Chess	05/20/93	
Willie Granville Bailey v. Winston-Salem State University	92 OSP 0285	Morrison	03/10/93	
Mattie W. Smith v. State Agricultural and Technical University	92 OSP 0298* ¹²	Reilly	09/14/93	
Julia Spinks v. Environment, Health, & Natural Resources	92 OSP 0313	Becton	04/12/93	8:4 NCR 382
James B. Price v. Transportation	92 OSP 0375	Gray	04/13/93	
I. Cary Nailling v. UNC-CH	92 OSP 0394	Becton	04/20/93	
Deborah Barber v. Correction	92 OSP 0396	Chess	03/04/93	
Laverne B. Hill v. Transportation	92 OSP 0431*	West	03/08/93	
Jimmy D. Wilkins v. Transportation	92 OSP 0432*	West	03/08/93	
Sarah W. Britt v. Human Resources, C.A. Dillon School, CPS	92 OSP 0455	West	05/26/93	8:6 NCR 484
Charles Robinson v. Revenue	92 OSP 0553	Morgan	07/21/93	
Anna L. Spencer v. Mecklenburg County Area Mental Health	92 OSP 0584	Becton	08/16/93	
Herman James Goldstein v. UNC-Chapel Hill et al.	92 OSP 0634	Morrison	05/04/93	
Ronnie H. Mozingo v. Correction	92 OSP 0644	Mann	10/11/93	
Glinda C. Smith v. Wildlife Resources Commission	92 OSP 0653	Morrison	03/12/93	
Cindy G. Bartlett v. Correction	92 OSP 0671	Morgan	06/08/93	
William Kenneth Smith Jr. v. Broughton Hospital (Human Resources)	92 OSP 0684	Becton	05/10/93	
Larry O. Nobles v. Human Resources	92 OSP 0732	Mann	04/23/93	
Beatrice Wheless v. Lise M. Miller, University Payroll Off., NC St. Univ.	92 OSP 0744*	Morgan	07/16/93	
Tracey Hall v. N.C. Central U., Off. of Scholarship & Student Aid	92 OSP 0815	Morgan	09/16/93	
Sondra Williams v. Winston-Salem State University	92 OSP 0847	Morrison	08/06/93	
Willie Thomas Hope v. Transportation	92 OSP 0947	Morgan	03/23/93	
David Scales v. Correction	92 OSP 0989	Chess	06/24/93	
Suzanne Ransley Hill v. Environment, Health, & Nat. Res.	92 OSP 0992	Reilly	03/18/93	8:2 NCR 224
Herman James Goldstein v. UNC-Chapel Hill et al.	92 OSP 1047	Morrison	05/04/93	
Charles M. Blackwelder v. Correction	92 OSP 1082	Morrison	10/15/93	8:15 NCR 1500
Beatrice Wheless v. Lise M. Miller, University Payroll Off., NC St. Univ.	92 OSP 1124*	Morgan	07/16/93	
John B. Sauls v. Wake County Health Department	92 OSP 1142	Reilly	03/08/93	8:1 NCR 88
Patti G. Newsome v. Transportation	92 OSP 1180	Becton	09/22/93	8:14 NCR 1346
Nancy McAllister v. Camden County Department of Social Services	92 OSP 1185	Chess	09/07/93	
Gilbert Jaeger v. Wake County Alcoholism Treatment Center	92 OSP 1204	Reilly	05/10/93	
Joseph Henry Bishop v. Environment, Health, & Natural Res.	92 OSP 1243	Reilly	03/05/93	
Glenn D. Fuqua v. Rockingham County Board of Social Services	92 OSP 1318	Morrison	08/03/93	
Willie L. Hudson v. Correction	92 OSP 1468	Becton	05/26/93	
Brenda K. Campbell v. Employment Security Commission	92 OSP 1505	Morrison	03/17/93	
Christie L. Guthrie v. Environment, Health, & Natural Resources	92 OSP 1555	Becton	05/31/93	
Sharon Reavis v. Crime Control & Public Safety	92 OSP 1606	Morrison	08/19/93	8:12 NCR 1163
James B. Price v. Transportation	92 OSP 1657	Mann	03/19/93	
Jerry L. Jones v. N.C.S.U. Physical Plant	92 OSP 1661	Chess	07/06/93	
Mattie W. Smith v. State Agricultural and Technical University	92 OSP 1691*	Reilly	09/14/93	
Roland W. Holden v. University of North Carolina at Chapel Hill	92 OSP 1715	Becton	08/30/93	8:13 NCR 1292
Betty Bradsher v. UNC-CH	92 OSP 1733	Becton	03/30/93	
Anthony M. Little v. Human Resources, John Umstead Hospital	92 OSP 1734	Becton	09/01/93	
Jamal Al Bakkat-Morris v. Glenn Sexton (DSS)	92 OSP 1741	Becton	03/24/93	
Rebecca Beauchesne v. University of North Carolina at Chapel Hill	92 OSP 1767	Becton	10/01/93	
Brenda Kay Barnes v. Human Resources	92 OSP 1768	Morrison	03/17/93	
Larry G. Riddle v. Correction, Division of Prisons	92 OSP 1774	Gray	04/26/93	
Stevie E. Dunn v. Polk Youth Center	92 OSP 1789	Becton	04/19/93	
Buford D. Vieregge Jr. v. N.C. State University, University Dining	92 OSP 1796	Morrison	05/27/93	
Dorothy Ann Harris v. Correction	93 OSP 0013	Morrison	09/15/93	
Brenda B. Miles v. University of North Carolina Chapel Hill	93 OSP 0033	Morrison	09/10/93	
Deborah J. Whitfield v. Caswell Center	93 OSP 0064	West	09/20/93	
Karen Canter v. Appalachian State University	93 OSP 0079	Reilly	06/15/93	
Terry Steve Brown v. Iredell County Health Department	93 OSP 0101	Morgan	08/06/93	

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Barbara A. Johnson v. Human Resources	93 OSP 0103	Morrison	03/17/93	
Carrie P. Smith v. County of Stanly	93 OSP 0109	Becton	04/01/93	
George W. Allen v. Human Resources, Correction, Agri & EHNR	93 OSP 0111	Reilly	04/16/93	
William G. Fisher v. St Bd of Ed, Albermarle City Schools & Bd of Ed	93 OSP 0134	Becton	04/20/93	
Grace Jean Washington v. Caswell Center	93 OSP 0153	Morgan	06/03/93	
Clifton E. Simmons v. Correction	93 OSP 0159	Morrison	04/21/93	
Willie L. James v. Caswell Center	93 OSP 0171	Morgan	05/27/93	
Irving S. Rodgers v. C.A. Dillon, Division of Youth Services	93 OSP 0177	West	04/21/93	
Richard E. Howell v. Correction, Wayne Correctional Center	93 OSP 0245	Gray	08/25/93	
Brian Dale Barnhardt v. State Highway Patrol	93 OSP 0251	Reilly	07/27/93	
F.R. "Don" Bowen v. Human Resources	93 OSP 0253	Morgan	08/06/93	
Michael L. Pegram v. Correction	93 OSP 0275*	Reilly	06/28/93	
Jerry D. Doss Sr. v. Correction	93 OSP 0287	Gray	05/17/93	
Debbie Renee Robinson v. Correction	93 OSP 0383	Nesnow	06/07/93	
Linda R. Wharton v. N.C. A & T University	93 OSP 0456	Chess	09/22/93	
Michael L. Pegram v. Correction	93 OSP 0472*	Reilly	06/28/93	
Hubert L. Holmes v. Transportation	93 OSP 0572	Reilly	08/17/93	
Timothy E. Blevins v. UNC A/K/A Western Carolina University	93 OSP 0604	Morgan	09/29/93	
Xantippe Blackwell v. Human Resources, Murdoch Center	93 OSP 0632	Reilly	09/01/93	
Wayne Bradley Johnson v. State Computing Center	93 OSP 0694	Chess	10/11/93	
Harold Kovolenko v. Lynn C. Phillips, Director of Prisons	93 OSP 0697	Nesnow	09/08/93	
Daniel Thomas Wheeler, Kye Lee Wheeler v. Caldwell County Department of Social Services	93 OSP 0752	Nesnow	09/16/93	
Terry Johnson v. Correction	93 OSP 0757	Gray	10/06/93	
Kathleen E. Conran v. New Bern Police Dept., City of New Bern; and City of New Bern Police Civil Service Board	93 OSP 0797	Morrison	09/21/93	
Dana Phillips v. Administrative Office of the Courts	93 OSP 0822	West	09/09/93	
Terry P. Chappell v. Correction	93 OSP 0834	Nesnow	10/11/93	
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Januita M. Braxton v. Bd. of Trustees/Teachers' & St Emp Ret Sys	91 DST 0017	West	09/07/93	
Herman D. Brooks v. Bd of Trustees/Teachers' & St Emp Ret Sys	91 DST 0566	Gray	04/13/93	
Henrietta Sandlin v. Teachers' & State Emp Comp Major Medical Plan	92 DST 0305	Morgan	04/12/93	
Frances Billingsley v. Bd/Trustees/Teachers' & St. Emp. Ret. Sys.	92 DST 0996	West	09/20/93	
Dennis Willoughby v. Bd./Trustees/Teachers' & St. Emp. Ret. Sys.	92 DST 1439	West	09/20/93	8:14 NCR 1356
Mary Alyce Carmichael v. Bd/Trustees/Teachers' & St Emp Ret Sys	92 DST 1506	Chess	04/08/93	
W. Rex Perry v. Bd/Trustees/Teachers' & St Emp Ret Sys	93 DST 0133	West	08/12/93	8:11 NCR 992
Rory Dale Swiggett v. Bd./Trustees/N.C. Local Govtl. Emp. Ret. Sys.	93 DST 0198	West	09/28/93	8:14 NCR 1360
TRANSPORTATION				
Yates Construction Co., Inc. v. Transportation	92 DOT 1800	Morgan	03/25/93	
UNIVERSITY OF NORTH CAROLINA HOSPITALS				
Constance V. Graham v. UNC Hospital	93 UNC 0269	Morgan	07/20/93	
Jacqueline Florence v. UNC Hospitals	93 UNC 0355	Becton	06/16/93	

STATE OF NORTH CAROLINA
COUNTY OF SAMPSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
91 OSP 0011

CONNIE B. LEE Petitioner,)	
v.)	FINAL DECISION
N.C. DEPARTMENT OF JUSTICE Respondent.)	
)	

On January 9, 1991 the Petitioner filed a petition in which she alleged that the Respondent had arbitrarily and capriciously reduced the Petitioner's position of employment from a full-time capacity to a part-time capacity, without just cause and in contravention of constitutional due process provisions and reduction-in-force regulations. The Respondent's Motion to Dismiss and Respondent's Memorandum of Law in Support of Motion to Dismiss were filed on March 15, 1991, in which the Respondent contends that the Office of Administrative Hearings lacks subject matter jurisdiction to review an agency's management decision to change an employee's work position from "permanent full-time" to "permanent part-time" as a result of a reduction in appropriations by the North Carolina General Assembly since the employee was not disciplined for alleged just cause, was not involuntarily separated and did not allege discrimination. The Respondent further contends in its motion to dismiss that the Petitioner's petition fails to state a claim upon which relief can be granted because the Respondent's action concerning the Petitioner's employment was not a reduction-in-force, in that the Petitioner was not separated from employment. The Petitioner filed the Petitioner's Memorandum of Law in Opposition of Motion to Dismiss on April 10, 1991, asserting that she has a cognizable claim under Chapter 126 of the North Carolina General Statutes because her grievance arises out of her employment and constitutes a "contested case" concerning the dispute about her full-time employment position and salary being reduced to a part-time employment position with one-half of the salary which the Petitioner previously earned.

CONCLUSIONS OF LAW

In Batten v. N.C. Dept. of Correction, 326 N.C. 338, 389 S.E.2d 35 (1990), the Supreme Court of North Carolina addressed the issue of the Office of Administrative Hearings' subject matter jurisdiction in a contested case involving, a state employee's grievance. The Supreme Court stated:

"The jurisdiction of the OAH [Office of Administrative Hearings] over the appeals of state employees grievances derives not from Chapter 150B, but from Chapter 126. The administrative hearing provisions of Article 3, Chapter 150B, do not establish the right of a person 'aggrieved' by agency action to OAH review of that action, but only describe the procedures for such review." (326 N.C. at 342-343, 389 S.E.2d at 38).

Chapter 126 of the North Carolina General Statutes is commonly known as "The State Personnel Act." The high court in Batten also offered the following criteria for the determination of the properness of the Office of Administrative Hearings' subject matter jurisdiction over a state employee's grievance:

"The question whether petitioner's appeal was a 'contested case' arising under the State Personnel Act turns upon whether he has stated grounds recognized in that Act as meriting administrative review and appeal." (326 N.C. at 345, 389 S.E.2d at 40)

N.C.G.S. §126-37(a) establishes that appeals involving a disciplinary action, alleged discrimination and any other contested case arising under Chapter 126 of the North Carolina General Statutes shall be conducted in the Office of Administrative Hearings, with the State Personnel Commission making a final decision in these cases. N.C.G.S. §126-35(a) states that no career State employee subject to the State Personnel Act shall be discharged, suspended or demoted for disciplinary reasons, except for just cause. Title 25, Chapter 1D, Section .0504(a) of the North Carolina Administrative Code authorizes the concept of a reduction-in-force by allowing an appointing authority to separate an employee whenever it is necessary due to shortage of funds or work, abolition of a position or other material change in duties or organization. 25 NCAC 1D .0504(c) gives a permanent employee who is separated due to reduction-in-force the right to appeal to the State Personnel Commission for a review to assure that systematic procedures were applied.

In the case at bar, the Petitioner's grievance fails to satisfy the criteria articulated by the Supreme Court of North Carolina in Batten v. N.C. Dept. of Correction, supra in order to properly establish subject matter jurisdiction within the province of the Office of Administrative Hearings. The allegation of the Respondent's improper reduction of the Petitioner's position of employment from a full-time capacity to a part-time capacity, although framed to be based upon appealable grounds of just cause and reduction-in-force, does not constitute grounds which are recognized in the State Personnel Act as meriting administrative review and appeal as a contested case under the jurisdiction of the Office of Administrative Hearings.

It is readily apparent from the parties' respective pleadings and dismissal motion documents that subject matter jurisdiction in this contested case cannot properly be based upon the reviewability of the existence of just cause under N.C.G.S. §126-35, although the Petitioner argues that there was no "just cause" for her reduction in employment from full-time status to part-time status, because the Petitioner was not disciplined here through discharge, suspension or demotion in her employment. It is similarly apparent from these pleadings and dismissal motion documents that subject matter jurisdiction cannot correctly be premised upon the reviewability of the application of reduction-in-force procedures specifically under 25 NCAC 1D .0504(c), despite the Petitioner's contention that her reduction in employment from full-time to part-time status contravened regulations regarding reduction-in-force, because the Petitioner was not separated from her employment as reduction-in-force rules contemplate. In this regard, the Petitioner has not stated grounds which are recognized in the State Personnel Act as meriting administrative review and appeal as a contested case under the jurisdiction of the Office of Administrative Hearings.

Since the jurisdiction of the Office of Administrative Hearings over appeals of state employee grievances derives from the State Personnel Act as enunciated by North Carolina's high court in Batten v. N.C. Dept. of Correction, supra, then the Petitioner's failure to state grounds for a contested case which are recognized in the State Personnel Act warrants the dismissal of the Petitioner's action due to a lack of subject matter jurisdiction.

FINAL DECISION

This contested case is DISMISSED for lack of jurisdiction under N.C.G.S. §150B-36(c).

NOTICE

In order to appeal a final decision, the person seeking review must file a petition with the Superior Court of Wake County or with the superior court of the county where the person resides. The petition for judicial review must be filed within thirty days after the person is served with a copy of the final decision. N.C.G.S. §150B-46 describes the contents of the petition and requires service of the petition on all parties.

This the 5th day of October, 1993.

Michael Rivers Morgan
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
92 OSP 1082

CHARLES M. BLACKWELDER Petitioner,)	FINAL DECISION DISMISSING CASE FOR <u>LACK OF JURISDICTION</u> N.C.G.S. § 150B-36(c)
v.)	
N.C. DEPARTMENT OF CORRECTION Respondent.)	
)	

Upon consideration of Respondent's Motion to Dismiss Petitioner's petition for a contested case hearing and Petitioner's Response to Respondent's Motion, the undersigned Senior Administrative Law Judge determines the following:

1. On October 1, 1990, Petitioner began employment with Respondent, the North Carolina Department of Correction, in a pay grade 64 position. On October 1, 1991, Petitioner and his position were reallocated upwards to a pay grade 66 position.

2. On May 12, 1992, Petitioner was advised, in writing, that his employment with Respondent would be terminated, effective February 28, 1992, for unacceptable personal conduct.

3. At the time of his dismissal, Petitioner had served for twelve months in a pay grade 64 position with Respondent, and had served for five months in a pay grade 66 position with Respondent.

4. On September 21, 1992, Petitioner filed a petition for a contested case hearing with the Office of Administrative Hearings appealing his dismissal from employment with Respondent alleging that his dismissal was without just cause.

5. On November 13, 1992, Respondent filed a Motion to Dismiss Petitioner's petition for lack of jurisdiction. The basis for Respondent's motion was that Petitioner did not have the requisite number of months of continuous State employment in his respective pay grades to classify him as a "permanent State Employee" under N.C.G.S. § 126-39 for the purpose of appealing his dismissal to the Office of Administrative Hearings and the State Personnel Commission.

6. Petitioner responded to Respondent's motion, contending that his previous employment with Southeastern Area Mental Health, an area mental health agency, should be credited toward his "continuous State employment" as defined under N.C.G.S. § 126-39 for the purpose of appealing his dismissal to the Office of Administrative Hearings and the State Personnel Commission.

7. Respondent filed a reply to Petitioner's response, contending that employment with an area mental health agency was not employment with the "State of North Carolina" for the purposes of N.C.G.S. § 126-39, and therefore should not be credited toward Petitioner's "continuous State employment" in determining whether Petitioner was a "permanent State employee" as defined under N.C.G.S. § 126-39.

8. In an effort to resolve whether Petitioner's prior employment with an area mental health agency was creditable State service for the purpose of pursuing an appeal under Chapter 126, the Senior Administrative Law Judge sought an advisory opinion from the State Personnel Commission as provided for

under N.C.G.S. § 126-5(h). On October 1, 1993, the Office of State Personnel provided an Affidavit on this issue, which the Senior Administrative Law Judge considers to be an advisory opinion.

9. In its Affidavit, the Office of State Personnel stated the following:

It has been the view and practice of the Office of State Personnel that employment with an area mental health authority does not constitute employment by the State of North Carolina for the purpose of GS 126-39.

10. As Petitioner's employment with the State of North Carolina does not meet the requirements of N.C.G.S. § 126-39, Petitioner is not a "permanent State employee" entitled to appeal under Chapter 126 of the North Carolina General Statutes, and the Office of Administrative Hearings and the State Personnel Commission lack jurisdiction over Petitioner's contested case.

DISCUSSION

The North Carolina Supreme Court has recognized that N.C.G.S. § 126-37 provides the basis for jurisdiction over personnel appeals to the Office of Administrative Hearings and the State Personnel Commission brought by state employees pursuant to Chapter 126. Batten v. N.C. Dep't of Correction, 326 N.C. 338, 343, 389 S.E.2d 35, 39 (1990). Furthermore, the North Carolina Court of Appeals has held that "[t]he right to appeal to an administrative agency is granted by statute, and compliance with statutory provisions is necessary to sustain the appeal." Lewis v. N.C. Dep't of Human Resources, 92 N.C. App. 737, 739, 375 S.E.2d 712, 714 (1989).

N.C.G.S. § 126-39 provides a specific definition of those individuals who are entitled to appeal an agency action to the State Personnel Commission. Specifically, a "permanent State employee" who is entitled to appeal an agency action under Chapter 126 is defined as being a person:

- (2) in a grade 61 to grade 65 position who has been continuously employed by the State of North Carolina for the immediate 36 preceding months;
- (3) in a grade 66 to grade 70 position who has been continuously employed by the State of North Carolina for the immediate 48 preceding months;

N.C.G.S. § 126-39 (1987).**

It is not disputed that Petitioner was not continuously employed with Respondent for 36 months or more in his pay grade 64 position nor for 48 months or more in his pay grade 66 position. The issue presented in this case is whether Petitioner's previous employment with an area mental health authority constitutes "employment with the State of North Carolina" under N.C.G.S. § 126-39.

In its Affidavit, the Office of State Personnel rendered the opinion that employment with an area mental health authority does not constitute employment with the State of North Carolina for the purpose of N.C.G.S. § 126-39. The North Carolina Court of Appeals has recently held that "'[w]here an issue of statutory interpretation arises, the construction adopted by those who execute and administer the law in question is highly relevant.' State v. Tew, 326 N.C. 732, 739, 392 S.E.2d 603, 607 (1990) (citations omitted)." Cauthen v. N.C. Department of Human Resources, 112 N.C. App. ___, ___ S.E.2d ___ (5 October 1993). Accordingly, as the State Personnel Commission is vested with the authority to establish policies and rules governing the State Personnel System, see, N.C.G.S. § 126-4, its opinion as to what types of employment constitute employment with the State of North Carolina under N.C.G.S. § 126-39 should be

** The remaining provisions of N.C.G.S. § 126-39 are not set forth in this decision as those provisions are not relevant to the specific facts of this case.

CONTESTED CASE DECISIONS

considered highly relevant to the determination of that issue.

For the foregoing reasons, Petitioner's employment with an area mental health authority does not constitute employment with the State of North Carolina for the purpose of defining a "permanent State employee" under N.C.G.S. § 126-39. Petitioner's employment with Respondent in his respective pay grades does not meet the requirements of N.C.G.S. § 126-39 regarding the number of months of necessary continuous employment in those pay grades. Therefore, Petitioner is not a "permanent State employee" as defined under Chapter 126 of the North Carolina General Statutes for the purpose of appealing an agency decision to the Office of Administrative Hearings and the State Personnel Commission, and, accordingly, the State Personnel Commission and the Office of Administrative Hearings lack jurisdiction over this appeal.

ORDER AND FINAL DECISION

It is therefore ORDERED that Petitioner's petition for a contested case hearing be DISMISSED for lack of jurisdiction.

This the 15th day of October, 1993.

Fred G. Morrison Jr.
Senior Administrative Law Judge

NOTICE

In order to appeal a Final Decision, the person seeking review must file a Petition in the Superior Court of Wake County or in the superior court of the county where the person resides. The Petition for Judicial Review must be filed within thirty (30) days after the person is served with a copy of the Final Decision. G.S. 150B-46 describes the contents of the Petition and requires service of the Petition on all parties.

CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
93 EHR 0003

MCLEOD LEATHER & BELTING CO., INC.)
Petitioner,)
v.)
DEPARTMENT OF ENVIRONMENT, HEALTH,)
AND NATURAL RESOURCES)
Respondent.)

RECOMMENDED DECISION

The above-captioned matter was heard by Michael Rivers Morgan, Administrative Law Judge on May 24, 1993 and June 25, 1993 in High Point, North Carolina.

APPEARANCES

Ramona J. Cunningham, Smith, Helms, Mulliss and Moore, for the Petitioner.

Donald W. Laton, Assistant Attorney General, for the Respondent.

ISSUE

Whether the Respondent properly and correctly denied the Petitioner's election to have the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to reimburse the Petitioner's costs for the cleanup of environmental damage resulting from a release of a petroleum product, based upon the Petitioner's alleged failure to pay annual tank operating fees which were due for the years 1990, 1991 and 1992.

STIPULATED FACTS

The parties stipulated to the following facts in the Final Prehearing Order filed on May 24, 1993:

- a. On October 25, 1988, McLeod submitted an Underground Petroleum Storage Tank Fee Payment Form, which indicated that fees were being paid for two (2) tanks of greater than 3,500 gallons.
- b. The Payment Form and a check in the amount of \$120.00 were received by the Respondent.
- c. The Petitioner's name and address were placed in the Respondent's database at that time.
- d. Petitioner was assigned Facility No. 0-027948 by Respondent.
- e. The Petitioner has never registered its tanks in accordance with 15 NCAC 2N .0303 by submission of either form 7530-1, GW/UST-1 or GW/UST-8.
- f. The Respondent sends invoices for annual fees to all parties that have registered underground storage tanks in North Carolina.

- g. The Respondent divided its invoicing system into four billing cycles. Tank owners are placed in a billing cycle according to their place in the alphabet.
- h. Petitioner was placed in the September I billing cycle (cycle #4).
- i. At no time did Respondent send an invoice to the Petitioner.
- j. Prior to Petitioner's removal of the tanks, Respondent did not send an invoice or any other correspondence or document to Petitioner.
- k. Following the initial payment on October 25, 1988, the Petitioner did not submit payments for tank fees.
- l. The tanks removed by Petitioner and for which trust fund reimbursement was sought and denied are the same tanks identified on the Payment Form submitted on October 26, 1988.

FINDINGS OF FACT

Based upon the evidence admitted at the hearing, the undersigned administrative law judge finds the following facts:

- 1. Charles Vickers is employed with the Petitioner as its Purchasing Manager.
- 2. The Petitioner received a form from its jobber, BP Oil, which Vickers did not understand.
- 3. Vickers contacted BP Oil for an explanation concerning the form which the Petitioner received, and was informed that the Petitioner needed to complete the form and send the form with a specified payment amount to the State of North Carolina because the State had established a fund.
- 4. Loyd Rich is the President and C.E.O. of the Petitioner.
- 5. Vickers discussed the form which BP Oil sent to the Petitioner with Rich.
- 6. Vickers and Rich completed the form and sent it, along with a check, to the State of North Carolina.
- 7. Based upon his conversation with a representative of BP Oil, it was Vickers' understanding that the Petitioner needed to complete the form to show that the Petitioner had oil storage tanks and to register for a fund which the State of North Carolina had created.
- 8. It was Vickers' understanding that he did not need to do anything further, on behalf of the Petitioner, after submitting the form to the State of North Carolina.
- 9. One of Vickers' responsibilities with the Petitioner includes the maintenance of its oil storage tanks.
- 10. Vickers did not have any further communication or correspondence with the State of North Carolina after the Petitioner sent the form and payment to the State.
- 11. It was Rich's understanding that the purpose of the form was to register the Petitioner's oil storage tanks with the State of North Carolina and the payment of a fee was for an insurance fund in the event that oil storage tanks leaked in the future.
- 12. In 1992 the Petitioner submitted to the State of North Carolina a notice of the Petitioner's intent to remove the Petitioner's oil storage tanks.

13. The Petitioner worked with an environmental engineering company to remove the Petitioner's oil storage tanks, with the engineering company supervising the cleanup of the tanks.
14. A representative of the environmental engineering company which worked with the Petitioner in the removal and cleanup of the Petitioner's oil storage tanks inquired as to whether the Petitioner had registered the tanks and paid fees in order that the Petitioner could proceed with a request for a reimbursement of funds for the cleanup.
15. The Petitioner submitted a claim to the State of North Carolina for reimbursement of funds in connection with the removal and cleanup of the Petitioner's oil storage tanks, since Rich felt that the Petitioner had registered the tanks and paid fees a number of years ago.
16. Annette Parker is employed with the Respondent's Division of Environmental Management, Groundwater Section, Pollution Control Branch, U.S.T. Unit as a Data Processing Coordinator.
17. Parker's work duties with the Respondent include overseeing the documentation process concerning notification for underground storage tanks, registration forms, fee payment forms, invoices and updates of compliance information, as well as generating invoices, implementing applicable late penalties and generating statistical data and credit/debit adjustments which are necessary for the Respondent's fees.
18. In order to generate an invoice, the Respondent must enter detailed tank information into its computer, such as the tank's size, age, contents, material construction and piping.
19. The information which the Respondent requires in order to generate an invoice is indicated in the "Notification for Underground Storage Tanks" form which a tank owner would complete in order to register an underground tank with the Respondent.
20. The "Notification for Underground Storage Tanks" form has been identified by different numerical designations such as Form 7530-1, GW/UST-1 and GW/UST-8.
21. A Notification for Underground Storage Tanks registration form contains a space to indicate the identification number for the facility at which the underground storage tank is located.
22. The Respondent has different files on its computer database, including a master file which contains facility owner information, tank information and compliance information on the tanks, and a fee file which contains all payments received by the Respondent upon the generation of invoices.
23. The master file and the fee file are joined together and intertwined by the identification number of the facility which has an underground storage tank.
24. A fee payment form of the Respondent is not a tank registration form.
25. In 1989, the Respondent assigned identification numbers to the approximately 25,000 facility sites which had storage tanks.
26. In assigning identification numbers to facility sites, the Respondent searched each fee payment form which it received in order to determine the site's registration number or identification number.
27. In situations in which the Respondent could not locate a tank registration form for a facility site for which the Respondent had received a facility fee payment form, the Respondent assigned a facility identification number solely to keep record of the received payment.
28. Upon the Respondent's receipt of the Petitioner's fee payment form, the Respondent assigned a facility identification number to the Petitioner so that the Respondent could keep record of the

- \$120.00 payment which the Petitioner sent in 1988.
29. Fees for storage tanks are paid annually to the Respondent.
 30. George Matthis is employed with the Respondent's Division of Environmental Management, Groundwater Section, Pollution Control Branch as the Supervisor of the State Trust Fund Group.
 31. Matthis' work duties with the Respondent include overseeing reimbursements from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund, which entails approving reasonable and necessary expenditures by reasonable parties who have conducted cleanups.
 32. Matthis reviewed a trust fund application for the Petitioner.
 33. After determining that the Petitioner's trust fund application was correctly completed and that the Petitioner was the statutory tank owner as indicated on the Petitioner's application, Matthis performed his normal routine of checking the Respondent's database after an application appears to be eligible for reimbursement.
 34. Matthis utilizes the fee payment screen of the Respondent's database, which would appear with dates of any invoices and the dates of fee payment concerning a facility location, in order to verify that a facility had paid all fees prior to the release being discovered for which reimbursement is sought.
 35. Matthis determined that the Petitioner had not paid all fees prior to the Petitioner's application for reimbursement from the trust fund, because the Petitioner's 1989 tank fees had been paid with no fee payments for the years 1990, 1991 and 1992.
 36. The Respondent did not have adequate information concerning the Petitioner's tanks upon which to base an invoice for fees for the tanks.
 37. All oil storage tank facilities which did not have tanks which were properly registered were placed in an invoice billing cycle by the Respondent, but none of the facilities were billed with invoices.
 38. Matthis determined that the Petitioner's application for reimbursement from the trust fund would be denied, based upon his finding that the Petitioner had paid no fees for its tanks since the 1989 tank fees had been paid.
 39. In a letter to Rich from the Respondent's Acting Director of the Division of Environmental Management A. Preston Howard dated November 24, 1992, the Respondent indicated that the Petitioner's application to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund for costs related to the Petitioner's cleanup of petroleum released from the Petitioner's underground storage tanks was being denied because all of the Petitioner's annual tank operating fees which were due for the year 1990, 1991 and 1992 had not been paid prior to the discovery of a release from the Petitioner's tanks on July 6, 1992.

CONCLUSIONS OF LAW

1. North Carolina General Statutes Section 143-215.94B establishes the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to be used for the payment of costs resulting from the cleanup of a discharge or release of a petroleum product from a commercial underground storage tank.
2. N.C.G.S. §143-215.94C(a) states, in pertinent part, that the owner or operator of a commercial petroleum underground storage tank shall pay to the North Carolina Secretary of Environment, Health, and Natural Resources for deposit into the Commercial Fund an annual operating fee.

3. N.C.G.S. §143-215.94C(b) states, in pertinent part, that the annual operating fee shall be determined on a calendar year basis, with the annual operating fee being due and payable on the first day of the month in accordance with a staggered schedule established by the Department of Environment, Health, and Natural Resources.
4. N.C.G.S. §143-215.94E(g)(3) states, in pertinent part, that no owner or operator shall be reimbursed pursuant to the Commercial Leaking Petroleum Underground Storage Cleanup Fund if the owner or operator has failed to pay any annual tank operating fee due pursuant to G.S. §143-215.94C.
5. Title 15A, Chapter 2P, Section .0301(a) of the North Carolina Administrative Code states that the owner or operator of each commercial underground storage tank shall pay all annual tank operating fees due for that underground storage tank.
6. 15A NCAC 2P .0301(b) states, in pertinent part, that the Division of Environmental Management shall send an invoice, for the amount of the annual operating fees due, to the owner or operator of any commercial petroleum underground storage tank in use on January 1 of the year and which has been registered with the Department. (EMPHASIS ADDED)
7. 15A NCAC 2P .0301(c) states, in pertinent part, that any owner or operator not receiving an invoice for annual operating fees shall still pay any fees due.
8. 15A NCAC 2P .0401(b) states, in pertinent part, that an owner or operator of a commercial underground storage tank is not eligible for reimbursement for costs related to releases if any annual operating fees due have not been paid in accordance with 15A NCAC 2P .0301 prior to discovery.
9. The Petitioner, as the owner of two oil storage tanks, was required to pay to the Respondent an annual operating fee for deposit into the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund for each of its underground tanks.
10. While the Respondent's Division of Environmental Management did not send a billing invoice to the Petitioner for the Petitioner's underground storage tank annual operating fees for the years 1990, 1991 and 1992, this is attributable to the Petitioner's failure to properly register its underground storage tanks with the Respondent and the Petitioner's lack of receipt of annual billing invoices from the Respondent did not absolve the Petitioner from its obligation to pay the annual operating fees for the underground storage tanks.
11. The Petitioner is not eligible for reimbursement of its costs, pursuant to the provisions of the Commercial Leaking Petroleum Underground Storage Cleanup Fund, which are related to the cleanup of a release from the Petitioner's oil storage tanks, because the Petitioner failed to pay annual tank operating fees which were due for the years 1990, 1991 and 1992 prior to the discovery of the release on July 6, 1992.
12. The Respondent properly and correctly denied the Petitioner's election to have the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to reimburse the Petitioner's costs for the cleanup of environmental damage resulting from a release of a petroleum product, based upon the Petitioner's failure to pay annual tank operating fees which were due for the years 1990, 1991 and 1992.

RECOMMENDATION

It is recommended that the Respondent's denial of the Petitioner's application for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund be upheld.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Department of Environment, Health, and Natural Resources.

This the 11th day of October, 1993.

Michael Rivers Morgan
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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